

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2014-001788

RECEIVED

AUG 31 2015

SC Court of Appeals

Clarence Winfrey Respondent,

v.

Archway Services Inc,Employer,

and

American Fire & Casualty Insurance Company c/o
Liberty Mutual Group, Appellants,

APPELLANTS' RETURN IN OPPOSITION TO
RESPONDENT'S MOTION TO DISMISS APPEAL

This matter comes before this Court on Respondent's "Motion to Dismiss" Appellants' appeal on the basis of a failure to comply with Appellate Court Rules. Specifically, Respondent appears to allege Appellant submitted an incomplete Designation of Matter. Respondent asserts four (4) separate issues with the Brief and Designation. These will be addressed individually. As a threshold issue, Appellant would assert that if any deficiency in the Designation of Matter or citation to the record is determined to be found, the remedy is to submit an amended Designation or properly provide the requested citations—not a full dismissal of an appeal. However, as set out herein, Appellant believes there are no deficiencies as claimed by Respondent. Additionally,

each and every one of Respondent's "issues" relates to the "Statement of the Case." The Statement of the Case is not evidence but, rather, merely a recitation of the procedural background leading to the appeal. A review of Appellants' Statement of the Case reveals it sets out the long and twisting path this case has taken through the Commission and the Circuit Court. If Respondent believes the Statement of the Case to be inaccurate or to need supplementation, he is certainly permitted by the Rules to present his own Statement of the Case to the court. However, Respondent's mere discontent with the factual background of this case is not grounds to dismiss an appeal—or for another extension to submit his Respondent's Brief.

1. Respondent first asserts there Appellant refers to "numerous Commission Forms...a Summons and Complaint filed in Richland County Circuit Court and the Motions and previous Order of the Commission issued by Commissioner Beck." Respondent asserts these various filings, documents which are a part of the Commission file and public record, are not "made part of the Record" (with the exception of one Order from Commissioner Beck included with one of Defendant's prior APA submissions). Appellant would point out that each and every one of these documents/filings referenced by Respondent are both included in the Full Commission Record and referenced by the Full Commission in their own Statement of the Case. Specifically, the Full Commission stated:

"...Claimant filed a Form 15, Section III..."

Full Comm. Decision and Order , p. 2, Issued July 25, 2014

"...Claimant filed...a Summons and Complaint in Richland County Circuit Court alleging a bad faith denial of benefits, alleging that S.C. Code Ann. § 42-9-260 is unconstitutional, seeking a temporary restraining order to stop Defendants from denying the claim, and seeking an

Order from Judge Lee finding the claim compensable and awarding benefits...”

Full Comm. Decision and Order, p. 2, Issued July 25, 2014

“Judge Lee issued and rescinded a temporary restraining order sought by Claimant.”

Full Comm. Decision and Order, p. 2, Issued July 25, 2014

“Defendants filed several motions with the Commission including a Motion to Quash the deposition of the adjuster, a Motion to Quash discovery of the adjuster’s claim file, and a Motion to Postpone the Hearing.”

Full Comm. Decision and Order, p. 3, Issued July 25, 2014

“...Claimant filed a Form 50 requesting a hearing on compensability for alleged injuries to his head, brain, left hand, left arm, chest, heart, and all other organs, members, and bodily parts.”

Full Comm. Decision and Order, p. 3, Issued July 25, 2014

(Attachment A).

This Decision and Order was included with Appellant’s Notice of Appeal in this matter. In sum, each and every document, filing, pleading, motion, etc addressed by Respondent appears within the Full Commission Decision and Orders as part of the matter on appeal. Appellant has herein provided the citation to those specific issues raised by Respondent. Additionally, because the matters raised by Respondent appear within only the Statement of the Case, and as set out above the Statement of the Case is not evidence for purposes of appeal but, rather, a recitation of the background of the matter, Respondent’s motion provides no justification for dismissal and should be rejected. Further, because this “motion” only relates to the Statement of the Case and this “motion” was filed on the very same day Respondent’s brief was due to this court with a

notation that by filing this “motion” Respondent would not be filing his Brief, the “motion” appears to be merely a calculated attempt to obtain *another* extension to file a brief in this matter rather than an actual dispute or controversy worthy of a “motion to dismiss.” This Court should not only deny the motion presented by Respondent but find Respondent failed to properly and timely serve his Respondent’s Brief as ordered by this Court in numerous successive extensions and continuances filed and requested by Respondent.

2. Respondent next asserts Appellant refers to “...a restraining order,” “...decisions of Commissioner Beck at a previous Motions Hearing...,” “...another Appeal in reference to the Order of Commissioner Beck as being filed in this Court...,” “...a WCC Form 50 and WCC Form 51...,” “...a Form 30 filing an Appeal to the Full Commission...,” and “...Commissioner Barden’s Order [and] the Full Commission’s Order...” Each of these documents, filings, pleadings, forms, etc—just as in the first portion of the brief—were included in the Full Commission Decision and Order and within Appellant’s Notice of Appeal. Again, each and every one of these “issues” raised by Respondent relates solely to the Statement of the Case which is merely a recitation of the factual background which brought this matter before the Court. The Statement of the Case is not evidence for the underlying appeal. Specifically, the Full Commission stated:

“...Claimant filed...a Summons and Complaint in Richland County Circuit Court alleging a bad faith denial of benefits, alleging that S.C. Code Ann. § 42-9-260 is unconstitutional, seeking a temporary restraining order to stop Defendants from denying the claim, and seeking an Order from Judge Lee finding the claim compensable and awarding benefits...”

Full Comm. Decision and Order, p. 2, Issued July 25, 2014

“Judge Lee issued and rescinded a temporary restraining order sought by Claimant.”

Full Comm. Decision and Order, p. 2, Issued July 25, 2014

“Defendants filed several motions with the Commission including a Motion to Quash the deposition of the adjuster, a Motion to Quash discovery of the adjuster’s claim file, and a Motion to Postpone the Hearing.”

Full Comm. Decision and Order, p. 3, Issued July 25, 2014

“...Commissioner Beck ruled on all outstanding issues raised by the motions including Defendants’ Motion to Postpone.”

Full Comm. Decision and Order, p. 3, Issued July 25, 2014

“Thereafter, Claimant timely filed a Form 30.”

Full Comm. Decision and Order, p. 3, Issued July 25, 2014.

“...Claimant filed a Form 50 requesting a hearing on compensability for alleged injuries to his head, brain, left hand, left arm, chest, heart, and all other organs, members, and bodily parts.”

Full Comm. Decision and Order, p. 3, Issued July 25, 2014

“...the Single Commissioner (Barden) issued a Decision and Order on February 27, 2014. Defendants timely filed a Form 30 based on legal errors contained in the Single Commissioner’s (Barden) Decision and Order.”

Full Comm. Decision and Order, p. 3, Issued July 25, 2014

This Decision and Order was included with Appellant’s Notice of Appeal in this matter. In sum, each and every document, filing, pleading, motion, etc addressed by Respondent appears within the Full Commission Decision and Orders as part of the matter on appeal. Appellant has herein provided the citation to those specific issues raised by Respondent. Additionally, because the matters raised by Respondent appear within only the Statement

of the Case, and as set out above the Statement of the Case is not evidence for purposes of appeal but, rather, a recitation of the background of the matter, Respondent's motion provides no justification for dismissal and should be rejected. Further, because this "motion" only relates to the Statement of the Case and this "motion" was filed on the very same day Respondent's brief was due to this court with a notation that by filing this "motion" Respondent would not be filing his Brief, the "motion" appears to be merely a calculated attempt to obtain *another* extension to file a brief in this matter rather than an actual dispute or controversy worthy of a "motion to dismiss." This Court should not only deny the motion presented by Respondent but find Respondent failed to properly and timely serve his Respondent's Brief as ordered by this Court in numerous successive extensions and continuances filed and requested by Respondent.

3. Respondent next argues the inclusion of Commissioner Beck's Single Commissioner Hearing Transcript in Appellants Designation of Matter is improper. Respondent bases this argument on the misconception that Commissioner Beck's Single Commissioner Hearing Transcript was not "part of the Record before Commissioner Barden." First, Rule 210(c), SCACR, provides that material that was presented to the Commission is properly included in the Record on Appeal. Where a matter has been before the Commission on several proceedings, this is not limited to material presented only in the instant proceeding. Second, the Hearing Transcript and Decision and Order from Commissioner Barden's hearing clearly refutes this assertion. Specifically, Commissioner Barden stated:

"[Defendant] cites for his objection the fact that Commissioner Beck had—held a Form 15 hearing wherein the defendants were found to have not unlawfully stopped

Mr. Winfrey's benefits after their investigation of the claim."

Comm. Barden Hr'g Tr. 6:3-7.

(Attachment B)

"...the Defendants object to jurisdiction based on their argument...that certain Findings in Commissioner Beck's Order from the Form 15 (III) hearing concerning Defendants stopping temporary benefits without a hearing under SC Code §42-9-260, which is on appeal, deprives this Commissioner of jurisdiction to hear the case on the merits/compensability issue."

Comm. Barden Decision and Order, p. 3

(Attachment C)

"It may be that—and I guess it's that all this will have to come out through the Appellate process...and once I sign an order, it certainly won't be within my province (sic) to determine whether or not I have held a hearing appropriately and lawfully, but that will all have to be determined."

Comm. Barden Hr'g Tr. 7:8-15.

"Without further objection the Commission file becomes a part of the record..."

Comm. Barden Hr'g Tr. 8:19-20.

"The Decision and Order of Commissioner T. Scott Beck was also offered as an exhibit but that is part of the Commission filed which is admitted without objection."

Comm. Barden Decision and Order, p. 2

It is clear from both Commissioner Barden's Decision and Order (which is the subject of this appeal) that she made very specific findings regarding the background surrounding the hearing before Commissioner Beck. The hearing transcript is a part of the Commission file. Commissioner Barden included the transcript in the record when she

made the entire Commission file a part of the record. Appellant has herein provided the citation to those specific issues raised by Respondent. Additionally, because the matters raised by Respondent appear within only the Statement of the Case, and as set out above the Statement of the Case is not evidence for purposes of appeal but, rather, a recitation of the background of the matter, Respondent's motion provides no justification for dismissal and should be rejected. Further, because this "motion" only relates to the Statement of the Case and this "motion" was filed on the very same day Respondent's brief was due to this court with a notation that by filing this "motion" Respondent would not be filing his Brief, the "motion" appears to be merely a calculated attempt to obtain *another* extension to file a brief in this matter rather than an actual dispute or controversy worthy of a "motion to dismiss." This Court should not only deny the motion presented by Respondent but find Respondent failed to properly and timely serve his Respondent's Brief as ordered by this Court in numerous successive extensions and continuances filed and requested by Respondent.

4. The Statement of the Case contains only a factual recitation of the background and procedural history of the case, including prior findings contained in the record by Commissioner Beck. There are no "contested facts." Respondent specifically objects to only one statement: "allegations about the Claimant working and being off for days, etc." In fact, the Full Commission in the Full Commission Decision and Order stated in the Evidence of the Case section "Employment records of Claimant indicate that he continued working the remainder of the day and the entire following day. (Def. APA p. 10-11)." Respondent does not raise any other specific examples of what he asserts are "contested facts." The Statement of the Case is merely a recitation of the procedural

background of this matter. Appellant has herein provided the citation to those specific issues raised by Respondent. Additionally, because the matters raised by Respondent appear within only the Statement of the Case, and as set out above the Statement of the Case is not evidence for purposes of appeal but, rather, a recitation of the background of the matter, Respondent's motion provides no justification for dismissal and should be rejected. Further, because this "motion" only relates to the Statement of the Case and this "motion" was filed on the very same day Respondent's brief was due to this court with a notation that by filing this "motion" Respondent would not be filing his Brief, the "motion" appears to be merely a calculated attempt to obtain *another* extension to file a brief in this matter rather than an actual dispute or controversy worthy of a "motion to dismiss." This Court should not only deny the motion presented by Respondent but find Respondent failed to properly and timely serve his Respondent's Brief as ordered by this Court in numerous successive extensions and continuances filed and requested by Respondent.

CONCLUSION

For all the foregoing reasons, Respondents Motion to Dismiss should be denied. Further, as Respondent has missed the deadline to file his brief in response to Appellant's brief without good cause based on an unsupportable and frivolous Motion designed merely to again delay the time period for filing his brief, this Court should reject any future brief of Respondent and decide the matter on Appellant's uncontested brief as submitted.

(Signature Page to Follow)

Respectfully submitted,

McANGUS GOUDELOCK & COURIE, LLC



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Attorneys for Appellant

August 31, 2015

EXHIBIT A

APPELLATE PANEL DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1306305

Clarence Winfrey

**EMPLOYEE,
CLAIMANT/RESPONDENT**

VS.

Archway Services Inc

EMPLOYER,

AND

**American Fire & Casualty Insurance Company
c/o Liberty Mutual Group**

**CARRIER,
DEFENDANTS/APPELLANTS,**

**Appellate Panel Review held in Columbia, South
Carolina, on May 19, 2014 per notices timely
And properly served upon all parties of interest.**

Appellate Panel Decision and Order Filed:

JULY 25, 2014

APPEARANCES: Claimant/Appellant represented by Preston F. McDaniel, Esquire
Defendants/Respondents represented by Brett H. Bayne

STATEMENT OF THE CASE

This claim arises out of an alleged work-related accident on May 22, 2013. On that date, Claimant contends he was momentarily shocked by a rotisserie oven he was working on. Following the accident, Claimant continued to work for the remainder of the day and the following day. On May 28, 2013—six days after the accident—Claimant presented to Doctor's Care and Lexington Medical Center with severe three vessel coronary disease as well as an acute myocardial infarction which caused an acute ventricular septal defect. At Doctor's Care, Claimant reported he was having no chest pressure and had started sweating that morning (May 28th). At Lexington Medical Center, Claimant indicated he was not having chest pain but had been sweating. Following the diagnosis, Claimant underwent surgery to repair the ventricular septal defect caused by the acute myocardial infarction. The medical records in the case revealed that Claimant has a distinct family history of coronary disease with his father passing away at a similar age from coronary disease and a myocardial infarction. Further, the medical records indicated that Claimant was a 35 year pack-a-day smoker and drank a case of beer per week. Based on all of the medical records available to Carrier, this claim was ultimately denied by verbal communication to Claimant on September 13, 2013.

Immediately following the denial of benefits, Claimant filed a Form 15, Section III requesting a hearing as well as a Summons and Complaint in Richland County Circuit Court alleging a bad faith denial of benefits, alleging that S.C. Code Ann. § 42-9-260 is unconstitutional, seeking a temporary restraining order to stop Defendants from denying the claim, and seeking an Order from Judge Lee finding the claim compensable and awarding benefits. Judge Lee issued and then rescinded the temporary restraining order sought by Claimant. A hearing on the merits of Claimant's Complaint has not been set by the Court. After

the temporary restraining order was rescinded, the Commission set Claimant's Form 15, Section III for a hearing before Commissioner Beck. In addition, Defendants filed several motions with the Commission including a Motion to Quash the deposition of the adjuster, a Motion to Quash discovery of the adjuster's claim file, and a Motion to Postpone the Hearing.

A hearing on all of the motions and on Claimant's Form 15, Section III was set on September 30, 2013 for November 11, 2013. Prior to the hearing, Commissioner Beck conducted a standard pre-hearing conference as well as a Motions Hearing wherein Commissioner Beck ruled on all outstanding issues raised by the motions including Defendants' Motion to Postpone. Each of these motions affected the ability to conduct the Form 15 hearing and were necessary to have prior to the hearing. Commissioner Beck gave Claimant the opportunity to postpone the Form 15 hearing in order to spend time preparing for each of the motions that were timely served. Claimant turned down that opportunity. At the hearing, all parties agreed that the only issue for Commissioner Beck was to determine whether or not Defendants had conducted a good faith investigation. In order to make that determination, Commissioner Beck limited the review of evidence to only those documents produced prior to the date of denial – September 13, 2013. Following the hearing, Commissioner Beck issued a Decision and Order on December 5, 2013 finding that Defendants had conducted a good faith investigation. Thereafter, Claimant timely filed a Form 30. The Full Commission has issued a preliminary Decision and Order in that portion of the case and a final Order is forthcoming.

On October 22, 2013, after the Form 15 hearing was set by the Commission, Claimant filed a Form 50 requesting a hearing on compensability for alleged injuries to his head, brain, left hand, left arm, chest, heart, and all other organs, members, and bodily parts. A hearing notice for the Form 50 hearing was sent by the Commission on December 6, 2013 with explicit instructions

that the hearing would be to determine compensability of Claimant's alleged injuries to his head, brain, left hand, left arm, chest, heart, and all other organs, members, and bodily parts. The Form 50 hearing was held before the Single Commissioner on January 13, 2014. Following the hearing, the Single Commissioner issued a Decision and Order on February 27, 2014. Defendants timely filed a Form 30 based on legal errors contained in the Single Commissioner's Decision and Order. The Full Commission conducted a review hearing on Defendants' Form 30 on May 19, 2014 and now issues this Decision and Order. Based on a review of the evidence submitted to the Commission and oral arguments before the Full Commission, the Single Commissioner's Decision and Order on compensability is hereby **AFFIRMED IN PART** and **REVERSED IN PART** as set forth below.

SINGLE COMMISSIONER FINDINGS OF FACT

1. Claimant injured his neck and left shoulder in an admitted accident on May 22, 2013. Claimant alleges that he also injured his heart on the date of accident, which injury (a) aggravated a pre-existing condition, and (b) ultimately resulted in a myocardial infarction and subsequent ventricle septal defect.
2. Claimant is 51 years of age (testimony of Claimant).
3. Claimant finished the 12th grade, but did not receive a diploma (Claimant's Deposition, pages 6-7).
4. Claimant's prior employment includes work (a) at USC installing Wi-Fi, (b) as electrical maintenance man at F.B. Johnson, (c) as an electrician for a company that "roughs in" wiring for new houses; and (d) as a roofer (Claimant's Deposition, pages 9-11 and 13; testimony of Claimant).

5. On the date of the accident, Claimant's job with Employer was equipment maintenance worker for deli and bakery departments at Publix and Wal-Mart stores (testimony of Claimant; Defendants' APA #9, page 94; Claimant's Deposition, page 11).
6. In the mechanics of the accident, Claimant was shocked with 240-480 volts of electricity; Claimant believed the actual voltage was 480 volts. Defendants' witness admitted at the hearing that he was unsure of the voltage amount involved, and Defendants did not present any evidence to rebut Claimant's estimation even though Employer had access to the rotisserie in question. The fact that Defendants did not present any specific evidence leads me to rely on Claimant's estimation. (Defendants' APA #7, page 90; testimony of Warren; Claimant's APA #5, page 78).
7. Temporal medical evidence from May 28, 2013, supports Claimant's testimony that Claimant experienced pain (the worst of which was in his neck, but was also in the front of his shoulder and his left arm as well) from the moment of the accident which got progressively worse. Dr. Greenfield testified that Claimant (a) rubbed his arm during the examination, and (b) reported that his arm hurt. Claimant began sweating the same night of the Thursday accident and also the next morning. (Defendants' APA #7, page 90; Defendants' APA #8, page 91; Claimant's APA #2, page 56; Claimant's APA #3, page 66; Deposition of Dr. Feldman, page 35, Claimant's Deposition, pages 13-16, 18, 20-21, and 32; Deposition of Dr. Greenfield, including but not limited to pages 5, 8, 16, and 21).
8. Dr. Travis stated that neck pain is a common presentation for a heart attack (Deposition of Dr. Travis, page 21).
9. Three physicians have all opined to a reasonable degree of medical certainty that the electric shock ultimately resulted in Claimant's heart attack, regardless of the date on

which the infarction occurred. The deposition testimony of Dr. Travis (the treating cardiovascular surgeon) is very compelling, as he—unlike any of the other physicians involved in this case—actually examined Claimant's heart in the operating room. Dr. Lide (the treating cardiologist) also links the electrical shock to Claimant's post-accident heart condition; in fact, Dr. Lide testified twice that he does not "see any way" that Claimant's infarction and VSD are not related to the injury. The third physician is a general physician board certified in family medicine (Claimant's APA #1, page 1; Claimant APA #2, pages 23-24; Claimant's APA #3, page 65; Deposition of Dr. Greenfield, pages 30-31; Deposition of Dr. Travis, including but not limited to pages 8, 13-17, and 23-32; Deposition of Dr. Lide in its entirety, including but not limited to pages 14, 23-24, 28, and 39).

10. Even if I discount or disregard the opinion of the general physician (board certified in family medicine), I give great weight to the opinions of Drs. Travis and Lide, who both opine that the heart condition is causally related. I fully considered the opinion of Dr. Feldman (the only physician who stated that there is no nexus between the electrical shock and the heart condition), but his opinion is outweighed by the opinions of the three other doctors, all three of whom treated Claimant rather than simply reviewing his medical records. I note that Dr. Feldman (a) did not examine Claimant or even speak with Claimant; (b) did not see Claimant's heart, as opposed to Dr. Travis who held it in his hand; (c) initially states in his written opinion that it is "possible" that there was no connection between the plaque rupture and the electrical shock, and then in the very next sentence states that it is of the "highest certainty;"; (d) Dr. Feldman is a cardiologist and not a cardiovascular surgeon; nor has he undergone a surgical residency; and (e) Dr.

Feldman was specifically asked to opine in writing as to whether there was a connection between an electrical shock and a VSD, although he does address other pertinent issues for Defendants in his deposition (Defendants' APA #10, page 97; Deposition of Dr. Feldman in its entirety, including but not limited to pages: 5-6, 10-11, and 17—lines 15 through 25; page 18—lines 1-4; pages 22-23, 31, 42-43, and 45-47; Deposition of Dr. Greenfield, page 4).

11. The statement by Ruppe is dispositive only of the fact that Claimant has a good work ethic. (Defendants' APA, Exhibit 1).
12. Claimant has not reached maximum medical improvement.
13. Drs. Travis and Lide are hereby named the treating physicians. Although Defendants have denied compensability of Claimant's heart condition, Defendants do not object to Drs. Travis and Lide serving as treating physicians.
14. The Claimant is specifically requesting a finding of compensability for the heart and no medical evidence was presented that Claimant sustained or even may have sustained a head or brain injury. I therefore find that at this point he has not met his burden of proof with regard to any injury to head/brain, and any benefits for the head/brain are denied at this juncture.
15. While the head and brain are listed a bodily parts involved under #3 in the Pre-Hearing Brief, the Claimant also notes in his Pre-Hearing Brief that this is a systemic electrical shock and requests treatment for, "all organs, members and bodily parts determined to be related." I note from the testimony and records of Dr. Greenfield that the Claimant had tenderness in the left arm and shoulder and was diagnosed with muscle shock. In her deposition she stated that this tenderness found on examination is more indicative of

actual injury to those areas than just the pain that is caused by a heart attack. Dr. Lide in his treatment notes and specifically on September 17, 2013, recorded that, "we tried this patient on Neurontin last month when he appears to have peripheral neuropathy secondary to electrocution at work. Dr. Lide also recorded on the August 13th visit that he was having numbness in his great toe and suggested this neurological symptom was due to the electrical shock he experienced rather than the myocardial infarction. Thus, if any problems are opined to have stemmed from the electrical shock injury which is outside of the area and expertise of Dr. Lide and Dr. Travis, those doctors may request referral for him to other physicians for evaluation and treatment but the Defendants retain the right to contest whether those are related to the accident and to select the physicians for treatment for any causally related problems.

16. For purposes of the hearing before the undersigned, Claimant is very credible. I base this finding on my observations of Claimant's demeanor and on the delivery of his testimony.
17. In reaching my conclusions, I fully considered the facts that Claimant (a) is a smoker, (b) has hypertension, (c) has a family history of "premature coronary artery disease, and (d) had pre-existing severe 3-vessel disease n the date of the accident. However, those four facts were also specifically considered by the 3 physicians who provided opinions to a reasonable degree of medical certainty. Further, Claimant does not allege that his pre-existing disease was caused by the accident; he only alleges an aggravation resulting in an injury to his heart (Defendants' APA #8, pages 91-92; Defendants' APA #9, page 94; Claimant's APA #2, pages 26 and 28, Deposition of Dr. Feldman, page 37; Claimant's Deposition, pages 26 and 29).

18. Although certainly not dispositive on the issue of compensability, I do not that Claimant had no coronary symptoms prior to the date of the electrical shock (Claimant's Deposition, page 27; Deposition of Dr. Lide, page 7, lines 21-22).
19. Claimant to receive temporary total disability benefits from September 15, 2013, through the present and continuing until further Order of the Commission or by agreement of the parties.
20. Claimant to receive ongoing treatment until he reaches maximum medical improvement.
21. Permanency is premature.
22. The issue of average weekly wage/compensation rate is held in abeyance.

SINGLE COMMISSIONER CONCLUSIONS OF LAW

In accordance with SC Code §42-17-40, the following conclusions of law apply in this case:

1. Under SC Code §42-1-160, the decision is made as an injury by accident arising out of and in the course of the employment. The medical problems which the Claimant has and which have resulted in his disability stem from the physical injury, the electrical shock that he sustained on May 22, 2013. Any medical condition and/or disability that either results directly from the physical injury or which is a pre-existing condition that is aggravated, accelerated or caused to become symptomatic by the physical injury is compensable as injury by accident under SC Law. See for example, Buff v. Columbia Baking Co., 215 S.C. 41, 53 S.E.2d 879 (1949); Walker v. City of Columbia, 247 S.C. 241, 146 S.E.2d 856 (1966); (as to the pre-existing conditions being compensable), Mullinax v. Winn Dixie Stores, Inc., 318 S.C. 431, 458 S.E.2d 76 (SC App. 1995).

2. Under SC Code §42-9-10 and SC Code §41-2-120, the determination is made as to the entitlement to disability compensation.
3. Under SC Code §42-15-60 the determination is made as to the provision of medical care.
4. Under the stipulation of the parties, venue is proper and the applicable average weekly wage and compensation rate that applies for the purpose of this hearing is determined. As to jurisdiction, SC Code §42-3-180 provides that this Commission has jurisdiction to decide all questions arising under the Title and states in pertinent part, "all questions arising under this Title...shall be determined by the Commission except as otherwise provided in this Title." The Defendants main argument in taking the position that this Commission does not have jurisdiction is based upon the doctrine of Law of the Case and is based upon certain Findings made by Commissioner Beck in his Order. However, after review of the position of the parties, arguments of the parties, and after review of Commissioner Beck's Order and the general jurisdiction of this Commission to decide issues arising under the Title and the Form 50 and 51 filed in this matter, this Commissioner is found, as a matter of law, to have jurisdiction over these proceedings. The Form 51 filed in this matter specifically admits that both employee and the employer were subject to the Workers' Compensation Act at the time in question. Further, Commissioner Beck's Order which serves as the basis for the Defendants' argument states and holds:

"IT IS FURTHERMORE ORDERED that all other issues in contention, specifically including the question of whether the Claimant sustained an injury by accident arising out of and in the course of his employment with Defendants resulting on compensable disability is preserved for adjudication at the hearing set pursuant to Claimant's October 21, 2013 Form 50 Employee's Request for Hearing."

5. Under the issues before the Commission for decision, all other issues are held in abeyance for further decision by the Commission.

LEGAL ISSUES RAISED BY DEFENDANT-APPELLANTS

- I. Did the Single Commissioner err in holding the hearing over Defendants' objections because, by conducting the hearing and ruling on material compensability issues, the Single Commissioner operated in an appellate capacity without proper jurisdiction?
- II. Did the Single Commissioner err in holding the hearing over Defendants' objections when specific rulings from a prior Single Commissioner Decision and Order may become the law of the case and, if upheld in that proceeding, would render any decision by the Single Commission to be in error?
- III. Did the Single Commissioner err in failing to find a date on which Claimant suffered a plaque rupture in Claimant's heart?
- IV. Did the Single Commissioner err in failing to find what caused the plaque rupture in Claimant's heart?
- V. Did the Single Commissioner err in failing to find a date on which Claimant suffered a myocardial infarction?
- VI. Did the Single Commissioner err in relying on Dr. Travis' written medical opinion when the evidence presented at the hearing and deposition testimony directly contradicts his written medical opinion?
- VII. Did the Single Commissioner err in relying on Dr. Lide's written medical opinion when the evidence presented at the hearing and deposition testimony directly contradicts his written medical opinion?

- VIII. Did the Single Commissioner err in relying on Dr. Greenfield's written medical opinion when the evidence presented at the hearing and deposition testimony directly contradicts her written medical opinion?
- IX. Did the Single Commissioner err in failing to deny compensability for a brain injury because Claimant presented no evidence of any brain injury even though Claimant specifically included a brain injury on his Form 50 and Form 58 as an issue to be determined at the hearing before the Single Commissioner?
- X. Did the Single Commissioner err in failing to deny compensability for a head injury because Claimant presented no evidence of any head injury even though Claimant specifically included a head injury on his Form 50 and Form 58 as an issue to be determined at the hearing before the Single Commissioner?
- XI. Did the Single Commissioner err in failing to deny compensability for a left hand injury because Claimant presented no evidence of any left hand injury even though Claimant specifically included a left hand injury on his Form 50 and Form 58 as an issue to be determined at the hearing before the Single Commissioner?
- XII. Did the Single Commissioner err in failing to deny compensability for a left arm injury because Claimant presented no evidence of any left arm injury even though Claimant specifically included a left arm injury on his Form 50 and Form 58 as an issue to be determined at the hearing before the Single Commissioner?
- XIII. Did the Single Commissioner err in failing to deny compensability for all other organs, members, and bodily parts because Claimant presented no evidence of any injury to any organs, members, or bodily parts even though Claimant specifically included other

organs, members, and bodily parts on his Form 50 and Form 58 as an issue to be determined at the hearing before the Single Commissioner?

- XIV. Did the Single Commissioner err in Finding of Fact #1 in that the Finding is limited only to Claimant alleging an injury to his heart when the record is clear that Claimant alleged injuries to his head, brain, left hand, left arm, and all other organs, members, and bodily parts?
- XV. Did the Single Commissioner err in Finding of Fact #6 by finding that Claimant believed the actual voltage to be 480 volts when Claimant's own testimony refutes that finding?
- XVI. Did the Single Commissioner err in Finding of Fact #6 that Defendants had access to the rotisserie oven when the record is clear that the oven belonged to a third party and Defendants did not own or control the oven?
- XVII. Did the Single Commissioner err in Finding of Fact #7 by finding that Claimant began sweating the night of the electrical shock when Claimant's own testimony refutes that finding?
- XVIII. Did the Single Commissioner err in Finding of Fact #9 that three physicians have opined the electrical shock resulted in Claimant's heart attack regardless of the date on which the heart attack occurred?
- XIX. Did the Single Commissioner err in Finding of Fact #14 that Claimant specifically requested a finding of compensability for the heart when there is no evidence in the record the hearing was limited in scope to the heart, when Claimant's own Form 50 and Form 58 demanded a hearing on compensability of the left hand, arm, shoulder, neck, head, brain, chest, and all organs, members, and bodily parts determined to be related and when the Notice of Hearing from the Commission included a determination of

compensability for the left hand, arm, shoulder, neck, head, brain, chest and all organs, members, and bodily parts determined to be related?

XX. Did the Single Commissioner err by not making any findings of fact or conclusions of law related to an aggravation of a pre-existing heart condition as alleged by Claimant?

EVIDENCE OF THE CASE

Claimant filed a Form 50 on October 21, 2013 alleging injuries to his "heart, left hand/arm/shoulder, neck, head (brain), chest." Thereafter, Defendants filed a Form 51 on or about November 19, 2013 denying every alleged injury and stated that "Claimant has failed to meet his burden of proving that he sustained a compensable injury or illness pursuant to the Act." This matter was set for a hearing on January 13, 2013 by a Notice of Hearing issued on December 6, 2013. That Notice of Hearing specifically stated that the purpose of the hearing was to "determine issues as set forth on Forms 50 and 51." Claimant's Pre-Hearing Brief filed on December 23, 2013 clearly states that the types of injury and body parts to be determined at the January 13, 2013 hearing are "heart, left hand/arm/shoulder, neck, head (brain), chest."

At the hearing, the issues were stated for the record and included an allegation of a head and possible brain injury. The Defendants position was that there was not any credible medical evidence establishing a relationship between the neck and any heart or brain injury.

Claimant notified Employer he was shocked while working on a rotisserie oven on May 22, 2013. (Def. APA p. 8). Employment records of Claimant indicate that he continued working the remainder of the day and the entire following day. (Def. APA p. 10-11). An email from Claimant to Employer indicates that he was experiencing neck pain on May 27, 2013 (5 days post-accident). (Def. APA p. 9). Claimant first presented to Doctor's Care on May 28, 2013 (6 days post-accident) complaining that he woke up sweating that morning (Def. APA p. 1).

Claimant was treated by Dr. Greenfield at Doctors' Care. Dr. Greenfield noted that Claimant had some tenderness in his shoulder and neck area. Id.

Claimant was then referred to and saw Dr. Dasgupta at the South Carolina Heart Center on May 28. Dr. Dasgupta also noted sweating and noted that Claimant denied chest pain but did have minimal left shoulder pain. (Def. APA p. 2). Dr. Dasgupta diagnosed Claimant with an acute myocardial infarction. Id. Dr. Dasgupta also noted that Claimant appeared to have a ventricular septal defect as a possible completion of his acute myocardial infarction. (Def. APA p. 2). Dr. Dasgupta referred Claimant to Lexington Medical Center where Dr. Travis performed surgery to repair an acute ventricular septal defect that formed following the myocardial infarction. (Def. APA p. 5-7).

All of the submissions to the Single Commissioner were reviewed, including the testimony presented at the hearing; medical opinions and records; and depositions of the Claimant, Dr. Lanneau Lide, Dr. Karen Greenfield, Dr. Barry Feldman and Dr. Jeffrey Travis.

FULL COMMISSION FINDINGS OF FACT

1. Claimant injured his neck and left shoulder in an admitted accident on May 22, 2013. Claimant alleges that he also injured his heart on the date of accident, which injury (a) aggravated a pre-existing condition, and (b) ultimately resulted in a myocardial infarction and subsequent ventricle septal defect.
2. Claimant is 51 years of age (testimony of Claimant).
3. Claimant finished the 12th grade, but did not receive a diploma (Claimant's Deposition, pages 6-7).
4. Claimant's prior employment includes work (a) at USC installing Wi-Fi, (b) as electrical maintenance man at F.B. Johnson, (c) as an electrician for a company that "roughs in"

- wiring for new houses; and (d) as a roofer (Claimant's Deposition, pages 9-11 and 13; testimony of Claimant).
5. On the date of the accident, Claimant's job with Employer was equipment maintenance worker for deli and bakery departments at Publix and Wal-Mart stores (testimony of Claimant; Defendants' APA #9, page 94; Claimant's Deposition, page 11).
 6. In the mechanics of the accident, Claimant was shocked with 240-480 volts of electricity; Claimant believed the actual voltage was 480 volts. Defendants' witness admitted at the hearing that he was unsure of the voltage amount involved, and Defendants did not present any evidence to rebut Claimant's estimation even though Employer had access to the rotisserie in question. The fact that Defendants did not present any specific evidence leads us to rely on Claimant's estimation. (Defendants' APA #7, page 90; testimony of Warren; Claimant's APA #5, page 78).
 7. Temporal medical evidence from May 28, 2013 supports Claimant's testimony that Claimant experienced pain (the worst of which was in his neck, but was also in the front of his shoulder and his left arm as well) from the moment of the accident which got progressively worse. Dr. Greenfield testified that Claimant (a) rubbed his arm during the examination, and (b) reported that his arm hurt. Claimant began sweating the same night of the Thursday accident and also the next morning. (Defendants' APA #7, page 90; Defendants' APA #8, page 91; Claimant's APA #2, page 56; Claimant's APA #3, page 66; Deposition of Dr. Feldman, page 35, Claimant's Deposition, pages 13-16, 18, 20-21, and 32; Deposition of Dr. Greenfield, including but not limited to pages 5, 8, 16, and 21).
 8. Dr. Travis stated that neck pain is a common presentation for a heart attack (Deposition of Dr. Travis, page 21).

9. Three physicians have all opined to a reasonable degree of medical certainty that the electrical shock resulted in Claimant's heart attack, regardless of the date on which the infarction occurred. The deposition testimony of Dr. Travis is very compelling, as he actually examined Claimant's heart in the operating room. Dr. Lide also links the electrical shock to Claimant's post-accident heart condition. Dr. Lide testified that he does not "see any way" that Claimant's infarction and VSD are not related to the injury. (Claimant's APA #1, page 1; Claimant APA #2, pages 23-24; Claimant's APA #3, page 65; Deposition of Dr. Greenfield, pages 30-31; Deposition of Dr. Travis, including but not limited to pages 8, 13-17, and 23-32; Deposition of Dr. Lide in its entirety, including but not limited to pages 14, 23-24, 28, and 39).
10. We give great weight to the opinions of Drs. Travis and Lide, who both opine that the heart condition is causally related. We fully considered the opinion of Dr. Feldman (the only physician who stated that there is no nexus between the electrical shock and the heart condition), but his opinion is outweighed by the opinions of the three other doctors, all three of whom treated Claimant rather than simply reviewing his medical records. We note that Dr. Feldman (a) did not examine Claimant or speak with Claimant; (b) did not see Claimant's heart; (c) states in his written opinion that it is "possible" that there was no connection between the plaque rupture and the electrical shock and later states that it is of the "highest certainty;"; (d) is a cardiologist and not a cardiovascular surgeon; and (e) was specifically asked to opine in writing as to whether there was a connection between an electrical shock and a VSD, although he does address other pertinent issues in his deposition (Defendants' APA #10, page 97; Deposition of Dr. Feldman in its entirety,

including but not limited to pages: 5-6, 10-11, and 17—lines 15 through 25; page 18—lines 1-4; pages 22-23, 31, 42-43, and 45-47; Deposition of Dr. Greenfield, page 4).

11. The statement by Ruppe is dispositive only of the fact that Claimant has a good work ethic. (Defendants' APA, Exhibit 1).
12. Claimant has not reached maximum medical improvement.
13. Drs. Travis and Lide are hereby named the treating physicians. Although Defendants have denied compensability of Claimant's heart condition, Defendants do not object to Drs. Travis and Lide serving as treating physicians.
14. Claimant filed a Form 50 on October 21, 2013 alleging injuries to his "heart, left hand/arm/shoulder, neck, head (brain), chest."
15. Defendants filed a Form 51 on or about November 19, 2013 denying every alleged injury and stated that "Claimant has failed to meet his burden of proving that he sustained a compensable injury or illness pursuant to the Act."
16. This matter was set for a hearing before the Single Commissioner on January 13, 2013 by a Notice of Hearing issued on December 6, 2013.
17. That Notice of Hearing specifically stated that the purpose of the hearing was to "determine issues as set forth on Forms 50 and 51."
18. Claimant's Pre-Hearing Brief filed on December 23, 2013 clearly states that the types of injury and body parts to be determined at the January 13, 2013 hearing are "heart, left hand/arm/shoulder, neck, head (brain), chest."
19. There is no question that Claimant alleged a head and/or brain injury on his Form 50.
20. There is no question that the Notice of Hearing indicated that all issues on the Form 50 would be determined at the hearing.

21. There is no question that Claimant had sufficient notice of the hearing and what was contained on his own Form 50.
22. There is no question that Claimant filed a Pre-Hearing brief indicating that he was seeking compensation for a head and/or brain injury.
23. There is no question that Defendants filed a Pre-Hearing Brief denying compensability of this claim.
24. There is no question that Claimant did not withdraw his allegations related to a head and/or brain injury prior to or at the hearing.
25. Claimant did not present any evidence at the hearing to substantiate his alleged head and/or brain injury.
26. Claimant had the absolute burden of proving the right to compensation for each and every injury alleged on the Form 50. If Claimant failed to present evidence, as he did in this claim related to the head and/or brain injury, then his right to compensation for the alleged head and/or brain injury should be denied.
27. We decline to leave the claim open for possibly unlimited future hearings to determine compensability of presently alleged body parts as it would be grossly prejudicial to Defendants.
28. Because Claimant failed to present any evidence of a head and/or brain injury, his claim for a head and/or brain injury is denied.
29. We note from the testimony and records of Dr. Greenfield that the Claimant had tenderness in the left arm and shoulder and was diagnosed with muscle shock. In her deposition she stated that this tenderness found on examination is more indicative of actual injury to those areas than just the pain that is caused by a heart attack. Dr. Lide in

his treatment notes and specifically on September 17, 2013, recorded that, "we tried this patient on Neurontin last month when he appears to have peripheral neuropathy secondary to electrocution at work. Dr. Lide also recorded on the August 13th visit that he was having numbness in his great toe and suggested this neurological symptom was due to the electrical shock he experienced rather than the myocardial infarction. Thus, if any neuropathic problems are opined to have stemmed from the electrical shock injury which is outside of the area and expertise of Dr. Lide and Dr. Travis, those doctors may request referral for him to other physicians for evaluation and treatment but the Defendants retain the right to contest whether those are related to the accident and to select the physicians for treatment for any causally related problems.

30. In reaching our conclusions, we fully considered the facts that Claimant (a) is a smoker, (b) has hypertension, (c) has a family history of "premature coronary artery disease, and (d) had pre-existing severe 3-vessel disease n the date of the accident. However, those four facts were also specifically considered by the 3 physicians who provided opinions to a reasonable degree of medical certainty. Further, Claimant does not allege that his pre-existing disease was caused by the accident; he only alleges an aggravation resulting in an injury to his heart (Defendants' APA #8, pages 91-92; Defendants' APA #9, page 94; Claimant's APA #2, pages 26 and 28, Deposition of Dr. Feldman, page 37; Claimant's Deposition, pages 26 and 29).
31. Although certainly not dispositive on the issue of compensability, we do note that Claimant had no coronary symptoms prior to the date of the electrical shock (Claimant's Deposition, page 27; Deposition of Dr. Lide, page 7, lines 21-22).

32. Due to the compensable injury to his heart, Claimant shall receive temporary total disability benefits from September 15, 2013, through the present and continuing until further Order of the Commission or by agreement of the parties.
33. Claimant shall receive ongoing treatment until he reaches maximum medical improvement.
34. A finding of permanency for Claimant's injuries is premature at this juncture.
35. The issue of average weekly wage/compensation rate is held in abeyance.

FULL COMMISSION CONCLUSIONS OF LAW

In accordance with S.C. Code Ann. § 42-17-50, the following conclusions of law apply in this case:

1. Reg. 67-701 provides the mechanism for the Full Commission review hearing.
2. Pursuant to S.C. Code Ann. § 42-1-160, Claimant sustained a compensable injury to his heart as a result of his May 22, 2013 work accident.
3. Pursuant to S.C. Code Ann. § 42-15-60, Claimant is entitled to medical treatment for his heart condition.
4. Pursuant to S.C. Code Ann. § 42-15-60, Claimant may be entitled to additional medical treatment for other causally related conditions subject to the findings of fact as stated herein.
5. Pursuant to S.C. Code Ann. § 42-15-60, Claimant is not entitled to any medical treatment or evaluation for any alleged head and/or brain injury.
6. Pursuant to S.C. Code Ann. § 42-15-60, Defendants have the right to choose authorized treating physicians for any additional medical care recommended for Claimant.

7. Pursuant to S.C. Code Ann. § 42-15-60, Drs. Travis and Lide will remain the authorized treating physicians for Claimant's heart condition.
8. Pursuant to Reg. 67-607, the Hearing Notice issued by the Commission shall contain the purpose of the hearing. In the present case, the Hearing Notice indicated the purpose of this underlying hearing was to resolve all issues on Claimant's Form 50 and Defendants' Form 51.
9. Pursuant to Reg. 67-610, the Claimant had the right to amend his Form 50 prior to the hearing. Claimant did not amend his Form 50 related to the alleged head and/or brain injury.
10. Pursuant to Reg. 67-611, Claimant was required to file a Form 58 Pre-Hearing Brief and was required to supplement or amend the Form 58 if there was any change. Claimant did not amend his Form 58 related to the alleged head and/or brain injury.
11. Pursuant to Reg. 67-613, the Commission may continue a Hearing if additional discovery is necessary or if it is premature to hear the case. Claimant did not seek a continuance for the purposes of additional discovery or timeliness of the hearing related to the alleged head and/or brain injury.
12. Pursuant to S.C. Code Ann. § 42-9-10 and 42-1-120, Claimant is entitled to temporary total disability benefits at this time.
13. Pursuant to S.C. Code Ann. § 42-3-180, we find the Single Commissioner had jurisdiction over this matter such that a hearing on compensability could be conducted despite the ongoing appeal from a prior order of the Commission.

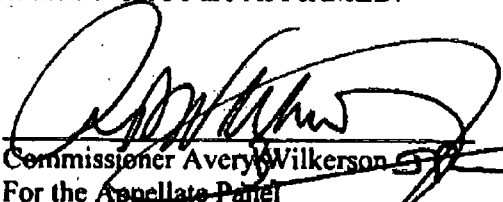
ORDER

IT IS HEREBY ORDERED that the Single Commissioner's findings of facts and conclusions of law related to the alleged head and/or brain injury are REVERSED.

IT IS FURTHER ORDERED that Claimant's alleged head and/or brain injury is hereby DENIED due to insufficient medical evidence presented to the Commission after raising the alleged head and/or brain injury as an issue before the Commission.

IT IS FURTHER ORDERED that all remaining issues decided by the Single Commissioner and appealed by Defendants on their Form 30 are AFFIRMED.


SO ORDERED.



Commissioner Avery Wilkerson
For the Appellate Panel

WE CONCUR:

1st



Commissioner Melody James



Commissioner Aisha Taylor

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Kim Falls on July 25, 2014

EXHIBIT B

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1306305

EMPLOYEE/CLAIMANT: CLARENCE WINFREY

EMPLOYER: ARCHWAY SERVICE, INC.

INSURER: AMERICAN FIRE & CASUALTY COMPANY

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

PURSUANT TO NOTICE OF WORKERS' COMPENSATION
HEARING, THE WITHIN HEARING WAS TAKEN ON THE 13TH DAY OF
JANUARY, 2014, COMMENCING AT THE HOUR OF 9:27 A.M., IN
COLUMBIA, SOUTH CAROLINA, BEFORE THE HONORABLE, SUSAN S. BARDEN
ATTENDED BY COUNSEL AS FOLLOWS:

SALLYE DEANNE NELSON
VERBATIM REPORTER

JAN L. WHITWORTH
COURT REPORTING SERVICES
POST OFFICE BOX 551
ROEBUCK, S.C. 29376

APPEARANCES

PRESTON F. MCDANIEL, ESQUIRE, OF THE FIRM
MCDANIEL LAW FIRM
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

ATTORNEY FOR THE EMPLOYEE/CLAIMANT,

BRETT HARRIS BAYNE, ESQUIRE, OF THE FIRM
MCANGUS GOUDELOCK & COURIE, L.L.C.
1320 MAIN STREET
COLUMBIA, SOUTH CAROLINA 29201

ATTORNEY FOR THE EMPLOYER/INSURER

ALSO ATTENDING:

SUSAN KISER
STEVE SHULMEISTER
MARK WARREN
CLARENCE WINFREY

I N D E X

PAGE

CLARENCE WINFREY:

DIRECT EXAMINATION BY MR. MCDANIEL	20
CROSS-EXAMINATION BY MR. BAYNE	44

MARK WARREN:

DIRECT EXAMINATION BY MR. BAYNE	58
CROSS-EXAMINATION BY MR. MCDANIEL	59
CERTIFICATE OF NOTARY PUBLIC	61

1 PURSUANT TO NOTICE OF HEARING, THE WITHIN HEARING
2 WAS TAKEN BY THE ABOVE-NAMED COURT REPORTER, A NOTARY
3 PUBLIC FOR THE STATE OF SOUTH CAROLINA, IN COLUMBIA,
4 SOUTH CAROLINA.

5 *

6 **BY COMMISSIONER BARDEN:**

7 TODAY'S DATE IS JANUARY 13TH, 2014. THIS IS
8 SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION FILE
9 NUMBER 1306305. THIS IS THE CASE OF THE CLAIMANT
10 MR. CLARENCE WINFREY WHO IS PRESENT TODAY. LET'S GO
11 OFF THE RECORD ONE SECOND.

12 (OFF THE RECORD)

13 **BY COMMISSIONER BARDEN:**

14 MR. WINFREY IS REPRESENTED BY ATTORNEY PRESTON
15 MCDANIEL. THE EMPLOYER IS ARCHWAY SERVICES AND ITS
16 CARRIER AMERICAN FIRE, BOTH OF WHICH ARE REPRESENTED
17 BY ATTORNEY BRETT BAYNE. THE PURPOSE OF TODAY'S
18 HEARING IS TO DETERMINE ISSUES RAISED IN FORMS 50
19 AND 51. CURRENTLY THE CLAIMANT IS BEING PAID A
20 COMPENSATION RATE OF \$442.40. MR. MCDANIEL, YOU
21 MENTIONED THAT AND WE DID NOT, WITH ALL OF THE OTHER
22 THINGS WE TALKED ABOUT IN SPITE OF AN HOUR THAT WE
23 EXPENDED USING OR TALKING ABOUT EVERYTHING, WE
24 REALLY DIDN'T GET INTO THE COMP RATE, ARE YOU --
25 WOULD YOU LIKE THAT HELD IN ABEYANCE? YOU SAID IN

1 YOUR ---

2 BY MR. MCDANIEL:

3 YES.

4 BY COMMISSIONER BARDEN:

5 --- FIFTY-EIGHT, YOU WANTED IT HELD IN
6 ABEYANCE.

7 BY MR. MCDANIEL:

8 YES, COMMISSIONER. WE ARE -- FOR PURPOSES OF
9 HOPEFULLY TRYING TO GET BENEFITS RESTARTED, WE ARE
10 AGREEABLE TO THAT COMP RATE WITH THE ---

11 BY COMMISSIONER BARDEN:

12 STIPULATION THAT YOU WOULD LIKE TO ---

13 BY MR. MCDANIEL:

14 --- THAT WE -- WE HAVEN'T EVER ASKED FOR THE
15 INFORMATION, YOU KNOW, TO CONFIRM THE COMP RATE SO
16 WE -- TO -- THAT WE CAN TRY THAT ISSUE AT A LATER
17 DATE.

18 BY COMMISSIONER BARDEN:

19 OKAY. AND DO Y'ALL HAVE AN OBJECTION TO ---

20 BY MR. BAYNE:

21 HOLDING THAT IN ABEYANCE? NO.

22 BY COMMISSIONER BARDEN:

23 OKAY. THE DATE OF THE INCIDENT, WHICH OCCURRED
24 WHICH WAS ELECTRICAL SHOCK OCCURRED ON MAY 22ND,
25 2013. ALL RIGHT. BUT I'M GOING TO PREEMPT MR.

1 BAYNE BEFORE I ASK IF THERE ARE ANY OBJECTIONS,
2 BECAUSE HE DOES HAVE AN OBJECTION TO GOING FORWARD
3 TODAY. HE SITES FOR HIS OBJECTION THE FACT THAT
4 COMMISSIONER BECK HAD -- HELD A FORM 15 HEARING
5 WHEREIN THE DEFENDANTS WERE FOUND TO HAVE NOT
6 UNLAWFULLY STOPPED MR. WINFREY'S BENEFITS AFTER
7 THEIR INVESTIGATION OF THE CLAIM. IN THAT ORDER,
8 COMMISSIONER BECK MADE A FINDING THAT THE CLAIMANT
9 SUFFERED A MYOCARDIAL INFARCTION ON MAY 28TH, 2013.
10 THE DEFENDANTS BELIEVE AND CONTEND THAT IF I FIND A
11 DIFFERENT ACCIDENT DAY OR IF I FIND A DIFFERENT DATE
12 OTHER THAN THE MAY 28TH, 2013, THAT THAT IS
13 PROCEDURALLY PROBLEMATIC, THAT I SHOULD NOT HOLD
14 THIS HEARING TODAY IN THAT IF THAT -- IF THE APPEAL
15 WERE DROPPED, THE LAW OF THE CASE IS THE MAY 28TH,
16 2013, AND THE DEFENDANTS BELIEVE THAT THAT SHOWS
17 THAT THERE IS NO CAUSAL RELATIONSHIP BETWEEN THE
18 HEART ATTACK AND THE ACCIDENT OF OR THE INJURY OF
19 MAY 22ND, 2013, BECAUSE OF THE TIME GAP. THAT THAT
20 WOULD BE THE LAW OF THE CASE AND, THEREFORE, I WOULD
21 BE SITTING IN A PSEUDO APPELLATE CAPACITY AND THAT
22 IF I FOUND A DIFFERENT DATE OF A HEART ATTACK OR
23 SOME OTHER OCCURRENCE OF AN EVENT THAT I WOULD BE
24 SETTING ASIDE OR REPUDIATING THE ORDER OF ANOTHER
25 COMMISSIONER, WHICH CERTAINLY I DO NOT WANT TO DO.

1 COMMISSIONER BECK DOES MENTION THE DATE, MAY 22ND,
2 2013. I HAVE LISTENED TO THE ARGUMENTS OF COUNSEL,
3 AND MR. BAYNE'S VERY ELOQUENT IN HIS STATEMENT OF
4 WHY I SHOULD NOT GO FORWARD TODAY. BUT CONSIDERING
5 THE FACT THAT THOSE TWO DATES ARE MENTIONED IN THE
6 ORDER, I DO BELIEVE THAT I MAY AND I'M CERTAINLY
7 HOPEFUL THAT I HAVE ENOUGH PROCEDURAL WIGGLE ROOM
8 TODAY TO GO FORWARD. IT MAY BE THAT -- AND I GUESS
9 IT'S THAT ALL THIS WILL HAVE TO COME OUT THROUGH THE
10 APPELLATE PROCESS, AND OF COURSE THINGS ARE WHAT
11 THEY ARE AND THAT -- AND ONCE I SIGN AN ORDER, IT
12 CERTAINLY WON'T BE WITHIN MY PROVENCE TO DETERMINE
13 WHETHER OR NOT I HAVE HELD A HEARING APPROPRIATELY
14 AND LAWFULLY, BUT THAT WILL ALL HAVE TO BE
15 DETERMINED. SO I CERTAINLY HAVE CONSIDERED YOUR
16 ARGUMENTS. THEY WERE CERTAINLY WELL SPOKEN, BUT I
17 AM GOING TO GO FORWARD TODAY AND TO ADJUDICATE THIS
18 CLAIM THAT HAS BEEN ASSIGNED TO ME. MR. BAYNE, ALSO
19 ON BEHALF OF HIS CLIENTS, REQUESTED THAT I LEAVE THE
20 RECORD OPEN, WHICH I ORDINARILY DO NOT DO, BUT
21 THROUGH NO FAULT OF HIS OWN, MR. BAYNE HAD SCHEDULED
22 THE DEPOSITION OF DR. LIDE, WHO -- WELL, NOT THROUGH
23 NO FAULT OF HIS OWN. HE SCHEDULED THE DEPOSITION OF
24 DR. LIDE, AND THEN DR. LIDE THROUGH NO FAULT OF MR.
25 BAYNE'S NOR HIS CLIENTS, DR. LIDE CANCELLED THAT

1. DEPOSITION. SO AT THE REQUEST OF MR. BAYNE, I HAVE
2. AGREED TO LEAVE THE RECORD OPEN. THAT DEPOSITION IS
3. GOING TO BE HELD LATER IN THE MONTH, SO I CANNOT
4. MAKE A DECISION UNTIL I GET THAT DEPOSITION, BUT I
5. CERTAINLY TRUST THAT DEPOSITION TRANSCRIPT WILL BE
6. EXPEDITED, AND I WILL MAKE A DECISION AS SOON AS I
7. FINISH REVIEWING THAT DEPOSITION.

8. ARE THERE ANY FURTHER OBJECTIONS TO APAs,
9. JURISDICTION, VENUE, OR ANY OTHER ITEMS?

10. **BY MR. MCDANIEL:**

11. NONE FROM THE CLAIMANT, COMMISSIONER.

12. **BY MR. BAYNE:**

13. NONE FROM THE DEFENDANT.

14. **BY COMMISSIONER BARDEN:**

15. THANK YOU. WITHOUT FURTHER OBJECTION AND, MR.
16. BAYNE, YOU OBVIOUSLY HAVE A RUNNING OBJECT TO THIS
17. HEARING STRICTLY, YOU KNOW, SIMPLY EVEN BEING HELD,
18. BUT YOU HAVE A -- OBVIOUSLY YOUR OBJECTION IS
19. PRESERVED FOR THE RECORD. WITHOUT FURTHER OBJECTION
20. THE COMMISSION FILE BECOMES A PART OF THE RECORD
21. WITH THE EXCEPTION OF SELF SERVING DECLARATIONS AND
22. UNSTIPULATED MEDICAL REPORTS.

23. PRIOR TO GOING ON THE RECORD, WE HELD A PRE-
24. HEARING CONFERENCE. IT IS THE POSITION OF THE
25. CLAIMANT THAT NOT ONLY DID HE INJURE HIS NECK AND

1 HIS LEFT SHOULDER AND ARM, WHICH ARE ADMITTED BODY
2 PARTS, THAT HE ALSO SUSTAINED A MYOCARDIAL
3 INFARCTION FROM THE SHOCK, WHICH ULTIMATELY RESULTED
4 IN V.S.D. OR A HOLE IN HIS HEART. HE ALSO CONTENDS
5 THAT HE SUFFERED A HEAD AND POSSIBLY A BRAIN INJURY,
6 BUT BECAUSE THE FOCUS OF HIS TREATMENT HAS BEEN JUST
7 ABOUT EXCLUSIVELY ON THE HEART, HIS HEAD AND HIS --
8 AND POSSIBLE BRAIN INJURY HAVE NOT BEEN EXPLORED OR
9 PROPERLY AND THOROUGHLY EVALUATED. SO HE SEEKS A
10 FINDING OF COMPENSABILITY OF NOT ONLY THE NECK AND
11 THE LEFT SHOULDER, WHICH THE DEFENDANTS ADMIT, AND
12 THOSE ARE THE ONLY ADMITTED BODY PARTS, I WANT TO
13 EMPHASIZE THAT, THE NECK AND THE SHOULDER. BUT HE
14 ALSO BELIEVES AND CONTENDS AND WOULD CONTEND THAT
15 THE MEDICAL EVIDENCE SUPPORTS HIS FINDING BY MORE
16 THAN A GREATER WEIGHT OF THE EVIDENCE STANDARD, BUT
17 HE BUT AT LEAST MEETS THAT STANDARD, AND HE ALSO
18 INJURED HIS HEART AND HIS HEAD. HE SEEKS TEMPORARY
19 TOTAL DISABILITY BENEFITS FROM SEPTEMBER 15TH, 2013,
20 TO THE PRESENT AND CONTINUING. HE SEEKS
21 REIMBURSEMENT FOR THOSE EXPENSES HE'S INCURRED THUS
22 FAR WITH REGARD TO THE EVALUATION AND TREATMENT OF
23 HIS INJURED BODY PARTS. HE SEEKS AN ORDER REQUIRING
24 THE DEFENDANTS TO PROVIDE TREATMENT WITH DR. TRAVIS,
25 WHO IS HIS TREATING CARDIOVASCULAR SURGEON, AS WELL

1 AS DR. LIDE, HIS CARDIOLOGIST. DOCTORS TRAVIS AND
2 LIDE WERE INITIALLY AUTHORIZED BEFORE BENEFITS WERE
3 DENIED. AND IF THIS CLAIM IS COMPENSABLE, THE
4 DEFENDANTS DO NOT -- AND OBVIOUSLY THE DEFENDANTS
5 BELIEVE THIS CLAIM IS NOT COMPENSABLE WITH REGARD TO
6 THE HEART AND BRAIN, BUT IF IT IS FOUND TO BE
7 COMPENSABLE, THE DEFENDANTS WOULD AGREE THAT DR.
8 TRAVIS AND DR. LIDE WOULD BE APPROPRIATE PROVIDERS
9 AND THAT THAT THEY ARE FAMILIAR WITH THE CLAIMANT'S
10 CONDITION AND THEY HAVE TREATED HIM AND THEY
11 INITIALLY WERE SELECTED BY THE DEFENDANTS. AS THE
12 CLAIMANT HAS NOT REACHED MAXIMUM MEDICAL
13 IMPROVEMENT, ANY DETERMINATION OF PERMANENCY WOULD
14 BE PREMATURE. THE CLAIMANT WOULD CONTEND THAT EVEN
15 IF HE HAD PRE-EXISTING HEART PROBLEMS THAT THEY WERE
16 AGGRAVATED SIGNIFICANTLY BY THE ELECTRICAL SHOCK,
17 WHICH CAUSED THE MYOCARDIAL INFARCTION, AND THEN THE
18 BURN CAUSED THE V.S.D. TOWARD HIS CONTENTION THAT
19 THIS IS A COMPENSABLE CLAIM, THE CLAIMANT WOULD
20 POINT TO MY ATTENTION THE FACT THAT THREE TREATING
21 PHYSICIANS HAVE ALL OPINED TO A REASONABLE DEGREE OF
22 MEDICAL CERTAINTY THAT THE CLAIMANT'S CONDITION IS
23 RELATED TO THE SHOCK OF MAY 22ND, 2013. AS FAR AS
24 THE DEFENDANTS' EXPERT, DR. FELDMAN, THE CLAIMANT
25 CONTENDS THAT THAT OPINION SHOULD NOT BE ACCORDED AS

1 MUCH WEIGHT IN THAT DR. FELDMAN NEVER SAW OR
2 EXAMINED THE CLAIMANT. THAT THE -- THAT DR. FELDMAN
3 IS A CARDIOLOGIST, AND THE ONLY CARDIOVASCULAR
4 SURGEON IN THIS CASE, DR. TRAVIS, DOES FIND THAT THE
5 CONDITION IS RELATED TO THE EMPLOYMENT. DR. FELDMAN
6 BY CONTRAST IS A CARDIOLOGIST. AND FINALLY THE
7 CLAIMANT WOULD POINT TO MY ATTENTION THE FACT THAT
8 DR. FELDMAN WAS ONLY ASKED IF THE V.S.D. WAS CAUSED
9 BY THE SHOCK AND NOT THE MYOCARDIAL INFARCTION. SO
10 THE CLAIMANT BELIEVES THAT DR. FELDMAN'S OPINION
11 SHOULD BE VIEWED WITH THOSE DEFICIENCIES. AND EVEN
12 IF DR. FELDMAN'S OPINION IS NOT VIEWED WITH ANY --
13 AS FLAWED OR FAULTY OR WITH ANY DEFICIENCIES, THE
14 CLAIMANT WOULD CONTEND THE FACT THAT DR. FELDMAN,
15 ACCORDING TO THE CLAIMANT'S INTERPRETATION, SAYS HE
16 DOES ADMIT THAT THE SHOCK COULD HAVE CAUSED THE
17 CLAIMANT'S CONDITION.

18 CONVERSELY, IT IS THE POSITION OF THE
19 DEFENDANTS THAT EXCEPT FOR THE NECK AND THE
20 SHOULDER, BENEFITS UNDER THE ACT SHOULD BE DENIED.
21 THE DEFENDANTS DISPUTE THAT THERE IS ANY CREDIBLE
22 MEDICAL EVIDENCE WHICH ESTABLISHES A RELATIONSHIP
23 BETWEEN THE SHOCK OF MAY 22ND, 2013, AND ANY HEART
24 OR BRAIN INJURY. THE DEFENDANTS POINT TO MY
25 ATTENTION THE OPINION OF DR. FELDMAN WHO THE

1 DEFENDANTS BELIEVE OUGHT TO BE GIVEN THE GREATEST
2 WEIGHT OF ALL THE OPINIONS IN THAT -- THAT THERE WAS
3 A SIGNIFICANT TIME GAP BETWEEN THE MAY 22ND, 2013,
4 INJURY AND THE HEART ATTACK. AND AGAIN THE
5 DEFENDANTS WOULD POINT TO MY ATTENTION THAT
6 COMMISSIONER BECK MADE A SPECIFIC FINDING THAT THERE
7 WAS A MYOCARDIAL INFARCTION ON THE 28TH, BUT EVEN
8 NOT WITHSTANDING THAT FINDING THAT COMMISSIONER BECK
9 MADE, JUST THE MEDICAL EVIDENCE ALONE DOES NOT
10 ESTABLISH A SUFFICIENT LINK OR CAUSAL NEXUS BETWEEN
11 THE SHOCK AND THE MYOCARDIAL INFARCTION. THE
12 DEFENDANTS BELIEVE THAT THERE WAS NO CHEST PAIN
13 UNTIL THE CLAIMANT WENT TO THE HOSPITAL ON THE 28TH.
14 AND OF COURSE THE DEFENDANTS CONTEND THAT THE MAIN
15 ISSUE IS WHAT CAUSED THE PLAQUE RUPTURE, WHICH
16 ULTIMATELY CAUSED THE HEART ATTACK. THE DEFENDANTS
17 BELIEVE THAT IT WAS NOT A SHOCK THAT JUST CAUSED A
18 HEART ATTACK. IT WAS THE CLAIMANT'S PLAQUE, HIS
19 DISEASED ARTERIES, WHICH THE DEFENDANTS BELIEVE
20 BECAUSE OF THE TIME GAP THERE CANNOT -- IT CANNOT BE
21 SHOWN THAT THERE WAS AN AGGRAVATION OF THE
22 CLAIMANT'S PRE-EXISTING CONDITION. THAT THE
23 CLAIMANT HAS SEVERE VESSEL DISEASE IN I BELIEVE
24 THREE OF HIS CORONARY VESSELS. SO THE DEFENDANTS
25 BELIEVE THAT THERE WAS A PLAQUE BUILD UP WHICH

1 ULTIMATELY RUPTURED, WHICH IS JUST COINCIDENTAL WITH
2 THE TIME -- WITH THE FACT THAT THERE WAS A SHOCK
3 INCIDENT OR INJURY SIX DAYS PRIOR, AND SO THAT THERE
4 -- THE TIME GAP ALONE AND PER THE OPINION OF DR.
5 FELDMAN IS REASON ENOUGH AND CLEAR AND CONVINCING TO
6 THEM THAT BENEFITS UNDER THE ACT SHOULD BE DENIED,
7 BECAUSE IT CANNOT BE STATED WITH A REASONABLE DEGREE
8 OF MEDICAL CERTAINTY WHEN THE PLAQUE DISRUPTION
9 OCCURRED, AND IT IS THE PLAQUE DISRUPTION WHICH
10 CAUSED THE MYOCARDIAL INFARCTION, WHICH IN TURN
11 CAUSED THE V.S.D.

12 ALL RIGHT. Y'ALL SAID IT FOR AN HOUR, AND YOU
13 SAID IT A LOT BETTER THAN I JUST DID, BUT IF YOU'RE
14 SATISFIED WITH THAT SUMMARY, UNLESS I'VE
15 MISCHARACTERIZED OR MISSTATED ANYTHING, AGAIN, I
16 HAVE NOT -- Y'ALL, I DON'T GET THESE DOCUMENTS UNTIL
17 THE VERY TIME OF THE HEARING. SO I AM -- I HAVEN'T
18 READ THEM. SO IF I'VE MISSTATED SOMETHING, I WANT
19 TO KNOW AND WILL CORRECT IT ON THE RECORD RIGHT NOW.
20 I STARTED WITH YOU AS YOU'RE THE MOVING PARTY,
21 UNLESS YOU'RE SATISFIED WITH THAT SUMMARY, SIR.

22 BY MR. MCDANIEL:

23 COMMISSIONER, I NEVER WAS -- CAN I JUST BRIEFLY
24 PUT ---

25 BY COMMISSIONER BARDEN:

1 YES.

2 **BY MR. MCDANIEL:**

3 --- MY POSITION ON THE RECORD IN REFERENCE TO
4 THE -- THAT YOU CANNOT GO FORWARD POSITION THAT
5 THEY'RE TAKING?

6 **BY COMMISSIONER BARDEN:**

7 I GUESS I DID NOT DO THAT ON YOUR BEHALF SO I -
8 - YOU CERTAINLY MAY.

9 **BY MR. MCDANIEL:**

10 RIGHT. AND I JUST WANT TO JUST FOR -- FOR THE
11 RECORD, NUMBER ONE, THAT WAS NOT AN ISSUE THAT WAS
12 BEFORE COMMISSIONER BECK. NUMBER TWO, THAT ---

13 **BY COMMISSIONER BARDEN:**

14 WHEN YOU SAY "THAT," YOU MEAN THE DATE?

15 **BY MR. MCDANIEL:**

16 THE -- THE DATE ---

17 **BY COMMISSIONER BARDEN:**

18 OKAY.

19 **BY MR. MCDANIEL:**

20 --- THAT HE REFERRED TO ON THE 28TH, NUMBER
21 ONE. NUMBER TWO, THAT IS NOT THE LAW OF THE CASE.
22 THEIR POSITION IS THAT IT'S THE LAW OF THE CASE.
23 THAT IS ON APPEAL. THAT ISSUE HAS NOT BEEN FOUND TO
24 BE A FINAL FINDING BY THE -- THE ALL THE -- ALL THE
25 APPELLATE PANEL THAT MAY LOOK AT THAT, THE APPELLATE

1 PANEL OF THE COMMISSION, COURT OF APPEALS, SUPREME
2 COURT. THIRD, AND -- AND MORE IMPORTANTLY IS THAT
3 COMMISSIONER BECK MADE A SPECIFIC FINDING, A FACT
4 AND CONCLUSION OF LAW. ANY CONCLUSION OF LAW --
5 NUMBER FIVE, HE SPECIFICALLY STATED, "SPECIFICALLY,"
6 COMMA, "THE CLAIMANT HAS REQUESTED A HEARING ON THE
7 MERITS OF WHETHER CLAIMANT SUSTAINED A COMPENSABLE
8 INJURY BY ACCIDENT AS IN -- AND IS ENTITLED TO
9 BENEFITS BY OPERATION OF FORM 50 EMPLOYEES REQUEST
10 FOR HEARING FILED ON OCTOBER 21ST, 2013. THEREFORE,
11 THE QUESTION OF WHETHER THE CLAIMANT SUSTAINED A
12 COMPENSABLE INJURY BY ACCIDENT IS ENTITLED TO -- AND
13 IS ENTITLED TO BENEFITS UNDER THE ACT WILL BE
14 DECIDED BY THE COMMISSION AT THE HEARING SET
15 PURSUANT TO THE CLAIMANT'S FORM 50 REQUEST FOR
16 HEARING." THEN IN HIS ORDER HE FURTHER FOUND, "IT
17 IS FURTHER ORDERED THAT ALL OTHER ISSUES AND
18 CONTENTIONS SPECIFICALLY INCLUDING THE QUESTION OF
19 WHETHER CLAIMANT SUSTAINED AN INJURY BY ACCIDENT
20 ARISING OUT OF AND IN THE COURSE OF HIS EMPLOYMENT
21 WITH DEFENDANTS RESULTING ON COMPENSABLE DISABILITY
22 IS PRESERVED FOR ADJUDICATION AT THE HEARING SET
23 PURSUANT TO THE CLAIMANT'S OCTOBER 21ST, 2013, FORM
24 50 EMPLOYEE'S REQUEST FOR HEARING." I THINK IT'S
25 VERY CLEAR FROM COMMISSIONER BECK'S ORDER THAT HE

1 WAS IN NO WAY TRYING TO MAKE A DETERMINATION AT THAT
2 HEARING AS TO WHETHER OR NOT BASED ON THE FACTS AS
3 TO WHETHER OR NOT THOSE FACTS WOULD SUBSTANTIATE
4 AFTER THEY WERE DEVELOPED AS TO WHETHER OR NOT
5 CLARENCE SUSTAINED A COMPENSABLE INJURY BY ACCIDENT.
6 I THINK HE MAKES IT VERY CLEAR. I WOULD JUST ADD
7 THAT. THE OTHER THING IS IN REFERENCE TO DR. BARRY
8 FELDMAN, THERE ARE TWO WAYS THAT AN EXPERT'S OPINION
9 MAY BE SUBMITTED INTO EVIDENCE. ONE IS BASED ON
10 THEIR PERSONAL KNOWLEDGE. AS -- AS YOU
11 APPROPRIATELY STATED, COMMISSIONER, DR. FELDMAN HAS
12 NOT REVIEWED, HAS NOT EVALUATED, HAS NOT ANY WAY
13 SEEN NOR ACTUALLY SEEN THE NOT ONLY THE PICTURES BUT
14 HE HAS NOT EVALUATED OR HAD ANY PHYSICAL CONTACT OR
15 EVALUATION OF -- OF MR. WINFREY. HIS -- HE HAS
16 ABSOLUTELY NO PERSONAL KNOWLEDGE. HE DID A RECORDS
17 REVIEW. THE SECOND WAY AN EXPERT OPINIONS MAY BE
18 SUBMITTED INTO EVIDENCE IS BASED ON A PROPERLY
19 PHRASED HYPOTHETICAL QUESTION. THERE IS NO EVIDENCE
20 WHEN YOU REVIEW THIS TRANSCRIPT THAT OF ANY PROPERLY
21 PHASED HYPOTHETICAL QUESTION BEING PRESENTED TO HIM
22 AND, THEREFORE, I BELIEVE THAT HIS EVIDENCE --
23 HOWEVER, FIRST TIME FOR SIMPLICITY SAKE I'M GOING TO
24 PLACE THAT ON THE RECORD, BUT AS I STATED BEFORE, WE
25 WANT TO MOVE FORWARD, AND SO I WOULD ASK YOU TO GIVE

1 IT SUCH WEIGHT AS YOU -- YOU'VE ALREADY PREVIOUSLY
2 STATED TO GIVE IT. HOWEVER, I BELIEVE IT'S ENTITLED
3 TO NO WEIGHT BECAUSE THERE'S NO EVIDENCE THAT HE HAS
4 ANY PERSONAL KNOWLEDGE OF MR. WINFREY AND HIS
5 CONDITION, NOR IS THERE ANY EVIDENCE OF A PROPERLY
6 PHRASED HYPOTHETICAL QUESTION, HOWEVER, I JUST --
7 THAT'S IT. AND WE'RE READY TO MOVE FORWARD.

8 **BY COMMISSIONER BARDEN:**

9 ALL RIGHT. MR. BAYNE, I'M GOING TO ALLOW YOU
10 TO RESPOND, SIR, IF WANT TO.

11 **BY MR. BAYNE:**

12 THANK YOU, COMMISSIONER. AS FAR AS THE -- THE
13 PROCEDURAL ASPECT OF THE CASE HERE, WE DON'T
14 DISAGREE THAT COMMISSIONER BECK IN HIS DECISION AND
15 ORDER INDICATED THAT COMPENSABILITY WILL BE
16 DETERMINED AT A LATER DATE AND INDICATED THAT THERE
17 WOULD BE A HEARING PURSUANT TO THE FORM 50 FILED BY
18 MR. WINFREY AND MR. MCDANIEL. ALL WE'RE POINTING
19 OUT IN RELATION TO COMMISSIONER BECK'S ORDER AND THE
20 PROCEDURAL ASPECT HERE TODAY IS THAT HE HAS MADE A
21 FINDING OF FACT THAT THE HEART ATTACK, THE
22 MYOCARDIAL INFARCTION, DID NOT OCCUR UNTIL MAY 28TH,
23 2013. THAT SPECIFIC FACT DOES NOT NECESSARILY
24 INDICATE CAUSATION OR DISPROVE CAUSATION, BUT IT IS
25 SOMETHING THAT IS THE LAW OF THE CASE AND THAT IS ON

1 APPEAL AT THIS MOMENT. OUR POSITION IN THE PRE-
2 HEARING AND CONTINUING IS THAT THAT DATE CANNOT BE
3 MODIFIED BY A SUBSEQUENT HEARING ONLY BY THE
4 APPELLATE PANEL ON APPEAL THAT MR. MCDANIEL HAS
5 FILED. SO THAT IS OUR PROCEDURAL APPEAL TO IT. WE
6 DON'T DISAGREE THAT HE INDICATED THAT THAT A
7 COMMISSIONER AT A LATER DATE WOULD DETERMINE
8 COMPENSABILITY AND THAT WE WOULD HAVE THIS HEARING.
9 THAT'S NOT AT -- AT ISSUE. RELATED TO DR.
10 FELDMAN, HE IS A CARDIOLOGIST. HE'S QUALIFIED TO
11 GIVE AN EXPERT OPINION. IN HIS DEPOSITION, HE WAS
12 ASKED HYPOTHETICAL QUESTIONS RELATED TO MR.
13 WINFREY'S CONDITION. FURTHER, COMMISSIONER, WHILE
14 HE WAS ASKED SPECIFICALLY TO SPEAK ON THE V.S.D.,
15 HIS OPINION AS WELL AS DR. TRAVIS'S AND I BELIEVE
16 DR. LIDE'S WILL INDICATE THAT THE V.S.D. WAS CAUSED
17 BY A MYOCARDIAL INFARCTION THAT WAS CAUSED BY A
18 PLAQUE RUPTURE. SO INDIRECTLY DR. FELDMAN WAS ASKED
19 TO SPEAK AS TO WHETHER OR NOT THE PLAQUE RUPTURE WAS
20 CAUSED BY AN ELECTRICAL SHOCK, WHICH THEN TRIGGERED
21 THE CHAIN OF EVENTS THAT LED US HERE TODAY AND LED
22 MR. WINFREY UNFORTUNATELY TO HAVE TO HAVE AN OPEN
23 HEART SURGERY. SO WHILE MR. -- AND WHAT DR.
24 FELDMAN'S OPINION OR IN HIS DEPOSITION, HE STATED,
25 "I WAS ASKED TO SPEAK ON THE V.S.D.," IMPLICITLY HE

1 IS REFERRING TO THE FACT THAT HE WAS ASKED TO SPEAK
2 ABOUT WHAT CAUSED THE V.S.D., AND WHAT CAUSED THE
3 V.S.D. WAS A MYOCARDIAL INFARCTION, AND WHAT CAUSED
4 THE MYOCARDIAL INFARCTION WAS THE PLAQUE RUPTURE,
5 AND WHAT CAUSED THE PLAQUE RUPTURE IS WHY WE'RE HERE
6 TODAY. WETHER OR NOT IT WAS CAUSED BY ELECTRICAL
7 SHOCK OR NOT IS SOMETHING THAT YOU'RE GOING TO HAVE
8 TO DETERMINE, AND IF IT WAS IT'S COMPENSABLE, IF IT
9 WAS NOT THEN IT IS NOT COMPENSABLE, AND THAT IS OUR
10 POSITION AT THIS HEARING.

11 **BY COMMISSIONER BARDEN:**

12 OKAY. THANK YOU, GENTLEMEN. ANYTHING ELSE
13 BEFORE WE HEAR FROM MR. WINFREY?

14 **BY MR. BAYNE:**

15 / NOTHING FROM ME, YOUR HONOR.

16 **BY COMMISSIONER BARDEN:**

17 ALL RIGHT, SIR. DO YOU NEED ANY WATER OR
18 ANYTHING?

19 **BY MR. WINFREY:**

20 I'M FINE. THANK YOU.

21 **BY COMMISSIONER BARDEN:**

22 YOU SURE? ALL RIGHT. WILL YOU RAISE YOUR
23 RIGHT HAND, PLEASE. DO YOU SWEAR OR AFFIRM THE
24 TESTIMONY YOU'RE ABOUT GIVE IN THIS PROCEEDING IS
25 THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE

1 TRUTH?

2 BY MR. WINFREY:

3 I DO.

4 CLARENCE WINFREY

5 BEING FIRST DULY SWORN, TESTIFIED ON HIS OATH AS FOLLOWS:

6 BY COMMISSIONER BARDEN:

7 PLEASE STATE YOUR FULL NAME FOR THE RECORD.

8 BY THE WITNESS:

9 CLARENCE P. WINFREY, JUNIOR.

10 BY COMMISSIONER BARDEN:

11 ALL RIGHT. THANK YOU. AND I KNOW IT'S
12 DIFFICULT TO SPEAK UP, BUT YOUR VOICE HAS TO REACH
13 OVER TO THOSE GENTLEMEN OVER THERE AND THE PEOPLE IN
14 THE BACK AS WELL, AS WELL AS OUR COURT REPORTER AND
15 ME, SO JUST DO THE BEST YOU CAN.

16 BY THE WITNESS:

17 OKAY.

18 BY COMMISSIONER BARDEN:

19 AND IF WE NEED TO BREAK, YOU JUST LET ME KNOW.

20 OKAY?

21 BY THE WITNESS:

22 OKAY.

23 BY COMMISSIONER BARDEN:

24 MR. MCDANIEL.

25 DIRECT EXAMINATION BY MR. MCDANIEL:

1 Q. CLARENCE, IS -- IF YOU CAN -- IF -- IF IT'S ALL
2 RIGHT, CAN YOU DIRECT YOUR COMMENTS TO COMMISSIONER
3 BARDEN IF I SIT OVER HERE AND JUST LIKE WHISPER IN
4 YOUR LEFT EAR?

5 A. YEAH.

6 Q. ALL RIGHT. SO I'M GOING TO GO OVER HERE AND JUST
7 LET YOU -- YOU AND COMMISSIONER BARDEN ---

8 BY COMMISSIONER BARDEN:

9 OR IF YOU WANT TO SIT HERE, MR. MCDANIEL,
10 (INDICATING) AND PUT YOUR STUFF THERE AND YOU CAN
11 SIT DOWN. I ---

12 BY MR. MCDANIEL:

13 THAT'S ---

14 BY COMMISSIONER BARDEN:

15 --- THAT'S WHAT ATTORNEYS DO, EITHER STAND OR
16 SIT THERE.

17 BY MR. MCDANIEL:

18 THANK YOU.

19 BY COMMISSIONER BARDEN:

20 AND I'M FINE WITH THAT.

21 BY MR. MCDANIEL:

22 OKAY.

23 BY COMMISSIONER BARDEN:

24 JUST SO THAT HE ISN'T GOING TO BE HEARING YOU
25 OVER THERE AND THEN LOOKING AT ME, THAT MIGHT BE A

1 LITTLE HARD. ALL RIGHT.

2 **DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:**

3 Q. CLARENCE, I'M GOING TO DO JUST A LITTLE BIT OF
4 BACKGROUND AND -- AND HOW OLD ARE YOU?

5 A. FIFTY-ONE.

6 Q. FIFTY-ONE. AND I BELIEVE YOU'RE DIVORCED AND HAVE
7 ONE CHILD WHO'S OVER THE AGE OF 18; IS THAT CORRECT?

8 A. YEAH.

9 Q. ALL RIGHT. AND YOU'VE BASICALLY -- YOUR BACKGROUND
10 EXPERIENCE IS IN MECHANICAL AND IN MAINTENANCE WORK
11 AND IN ELECTRICAL?

12 A. YEAH. YEAH.

13 Q. FOR THE LAST 15 YEARS LEADING UP TO THE TIME THAT
14 YOU WENT TO WORK FOR ARCHWAY SERVICES, WHAT -- WHAT
15 TYPES OF JOBS DID YOU DO; WHAT -- WHAT AREA DID YOU
16 WORK IN?

17 A. I WAS THE MAINTENANCE MAN AT F.P. JOHNSON, A PLANT
18 IN CHAPIN; ROOF ELECTRIC; CAROLINA WINGS, I WAS
19 THEIR MAINTENANCE MAN BASICALLY DOING THE SAME THING
20 AS ARCHWAY. AND ---

21 **BY COMMISSIONER BARDEN:**

22 CAN YOU GENTLEMEN HEAR OKAY?

23 **BY MR. BAYNE:**

24 OKAY.

25 **BY COMMISSIONER BARDEN:**

1 YOU CAN? ALL RIGHT.

2 THE WITNESS RESUMES ANSWER:

3 A. AND I WORKED WITH STEVE SCHULMEISTER; HE WAS A
4 MASTER ELECTRICIAN.

5 DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

6 Q. OKAY. ALL RIGHT. AND SO BASICALLY YOU DID
7 MAINTENANCE WORK BUT DID A LOT OF WORK IN THE
8 ELECTRICAL FIELD?

9 A. ELECTRICAL AND MAINTENANCE. YES, SIR.

10 Q. ALL RIGHT. AND ARCHWAY SERVICES, HOW LONG HAD YOU
11 BEEN WITH THEM BEFORE THIS ACCIDENT?

12 A. I'VE BEEN WITH THEM EIGHT, NINE MONTHS; I MIGHT BE
13 WRONG.

14 Q. ALL RIGHT. AND THEN -- AND SO WHAT -- WHAT WERE YOU
15 DOING, WHAT WAS YOUR JOB AT ARCHWAY SERVICES?

16 A. WE TOOK CARE OF ALL THE WAL-MART DELIS. WE JUST
17 TOOK OVER PUBLIX'S ABOUT TWO MONTHS PRIOR AND WORKED
18 ON ALL OF THEIR EQUIPMENT FOR LIKE THE ROTISSERIES
19 AND FRYERS AND THINGS LIKE THAT.

20 Q. LET ME ASK YOU THIS ON A GENERAL BASIS, WHAT LEVEL
21 OF CURRENT IS IT -- YOU WORKED ON COMMERCIAL
22 EQUIPMENT, ELECTRICAL EQUIPMENT AND -- AND ALL THAT
23 TYPE OF -- AND THAT ARE FOUND IN THE KITCHEN. TELL
24 ME WHAT THE GENERAL VOLTAGE IS OF THAT KIND OF
25 EQUIPMENT?

1 A. LIKE THE ROTISSERIE I WAS WORKING ON WAS HIGH
2 VOLTAGE. I DIDN'T LOOK TO SEE HOW MUCH EXACTLY IT
3 WAS, BUT IT HAD TO BE 240 OR HIGHER.

4 Q. AND BASICALLY, I KNOW IT'S -- IT'S ALWAYS HELPFUL TO
5 ME TO GET THIS EXPLAINED TO ME. HOW DOES -- YOU --
6 YOU HAVE TRUNK LINE FOR A BETTER TERM THAT COMES IN
7 TO -- TO A BUSINESS, AND THEN HOW DOES THAT FILTER
8 DOWN TO LIKE YOUR 220 OR YOUR 240 CURRENT OR YOUR
9 480?

10 A. YOU HAVE BARS ON THE BACK WHERE YOUR MAIN POWER
11 COMES IN, AND THAT'S WHERE YOU PUT YOUR BREAKERS,
12 AND IT DEPENDS ON THE AMP DRAW OF THE EQUIPMENT.
13 'CAUSE LIKE THAT ROTISSERIE THAT HURT ME, IT HAD
14 THREE BREAKERS FOR THAT ONE ROTISSERIE. I MEAN
15 THERE WAS ONE ON TOP, ONE ON BOTTOM. SO THERE ARE
16 THREE MORE FOR THE BOTTOM.

17 Q. AND SO BASICALLY, FOR EXAMPLE, THERE'S VOLTAGE EVEN
18 880 OR HIGHER THAT COMES INTO THE MAIN LINE?

19 A. OH, YES.

20 Q. AND THEN IT'S DISTRIBUTED OUT?

21 A. THAT'S CORRECT. THERE'S GREATER COMING IN.

22 Q. AND THEN -- THEN THAT -- THAT'S DISTRIBUTED ON OUT,
23 SO THIS -- THIS ROTISSERIE HAD AT LEAST THREE
24 BREAKERS. SO IT WAS AT LEAST 220 OR 240?

25 A. IT WAS AT 240. I MEAN, IT'S 240 OR ABOVE, YES.

1 Q. OH. OKAY. NOW, JUST TELL COMMISSIONER BARDEN WHAT
2 HAPPENED, YOU KNOW, WHAT TIME OF DAY AND YOU WERE
3 AND -- AND WHAT -- WHERE YOU WERE AND WHERE THE
4 ACCIDENT OCCURRED?

5 A. I WAS AT A PUBLIX, STORE 67 ON ROSEWOOD DRIVE. THEY
6 HAVE A ROTISSERIE STACKED ON TOP OF ROTISSERIE AND
7 SO I MADE -- I WENT THERE AND MADE ARRANGEMENTS
8 WHERE I COULD GET THERE AT 6:30 IN THE MORNING,
9 BECAUSE YOU ONLY GOT A LITTLE WALKWAY SO I COULD
10 PULL THE ROTISSERIES OUT. SO THE NEXT DAY I WENT,
11 AND I WAS THERE ABOUT 6:15. THE LADY MANAGER LET ME
12 IN, AND THERE WAS ONE GIRL BACK AT THE DELI. AND I
13 PULLED THE ROTISSERIES OUT. THE FRYERS ARE BEHIND
14 ME. I TOOK THE PANEL OFF AND SET IT ON THE BOTTOM
15 ROTISSERIE ON THE -- THE BOTTOM OF THE TOP
16 ROTISSERIE ON THE LITTLE LEDGE, AND I HAD MY HAND
17 LIKE THIS (INDICATING). I WAS TRACING WIRES OUT.

18 **BY COMMISSIONER BARDEN:**

19 SO YOU WERE HOLDING AND USING WIRES WITH YOUR
20 RIGHT, LEFT HAND?

21 **BY THE WITNESS:**

22 YEAH, TRACING WIRES WITH MY RIGHT.

23 **BY COMMISSIONER BARDEN:**

24 RIGHT HAND. OKAY.

25 **BY THE WITNESS:**

1 AND THEN ONE OF THE WIRE PRONGS WERE BROKEN OFF
2 THE SWITCH, WHICH IS DOWN BY MY HAND.

3 **BY COMMISSIONER BARDEN:**

4 BY YOUR RIGHT HAND?

5 **BY THE WITNESS:**

6 WHICH I DID NOT SEE, AND I JUST LOOKED TO MAKE
7 SURE ALL THE WIRES WERE ATTACHED, BUT IT WAS JUST
8 FLOATING. AND WHEN I WAS MOVING THE WIRES, THAT
9 WIRE MOVED, AND I MEAN IT BLEW UP. I MEAN NOT NO
10 POW, IT WENT KABAM. AND THAT'S WHEN I SNATCHED BACK
11 REAL HARD, BUT I COULD FEEL IT FROM HERE
12 (INDICATING), MY NECK.

13 **BY COMMISSIONER BARDEN:**

14 SO YOU'RE USE -- YOU'RE INDICATING YOUR LEFT
15 ARM ALL THE WAY UP?

16 **BY THE WITNESS:**

17 YEAH, I GOT A SCAR RIGHT THERE.

18 **BY MR. MCDANIEL:**

19 COMMISSIONER, YOU -- YOU CAN STILL SEE THE SCAR
20 WHERE THE ---

21 **BY COMMISSIONER BARDEN:**

22 YOU CAN SIT DOWN. I'LL COME OVER TO YOU.
23 GENTLEMEN, IF Y'ALL WANT TO COME OVER AND LOOK AT
24 THE SCAR YOU'RE WELCOME TO. (COMMISSIONER VIEWS
25 SCAR) OKAY. ALL RIGHT. THANK YOU.

1 BY THE WITNESS:

2 AND THAT'S WHERE THE POWER WENT IT.

3 BY COMMISSIONER BARDEN:

4 ALL RIGHT.

5 BY THE WITNESS:

6 AND IT WENT UP MY ARM AND FROM MY EARS DOWN
7 THROUGH MY SHOULDER.

8 BY COMMISSIONER BARDEN:

9 IS THAT YOUR MIDDLE FINGER THE SCAR WAS ON?

10 BY THE WITNESS:

11 YES, MA'AM.

12 BY COMMISSIONER BARDEN:

13 OKAY. SO IT WENT UP YOUR ARM INTO YOUR NECK?

14 BY THE WITNESS:

15 RIGHT THROUGH HERE AND RUN DOWN THROUGH HERE
16 (INDICATING).

17 BY COMMISSIONER BARDEN:

18 OKAY. AND YOU'RE INDICATING YOUR CHEST AND UP
19 INTO YOUR HEAD A LITTLE BIT?

20 BY THE WITNESS:

21 YEAH.

22 BY COMMISSIONER BARDEN:

23 ALL RIGHT.

24 BY THE WITNESS:

25 AND THAT'S HOW -- WHEN I CALLED BOBBY RUPPE AND

1 EXPLAINED TO HIM THEY GOT MORE PROBLEMS THAN A --
2 THE LIGHT THAT I WAS WORKING ON. THEY GOT WIRES
3 BUSTING OFF THE SWITCH. AND THAT'S WHAT HAPPENED AT
4 THAT PUBLIX. AND I PUT EVERYTHING BACK TOGETHER AND
5 -- WELL, FIRST I HAD TO GO OUTSIDE TO GET MY
6 COMPOSURE BACK. THEN I CALLED BOBBY RUPPE. THEN I
7 TOOK PICTURES OF THE WIRES AND THE SWITCHES AND ALL
8 OF THAT, AND I SENT THEM TO BOBBY.

9 BY MR. MCDANIEL:

10 COMMISSIONER, IF I -- I CAN STOP CLARENCE RIGHT
11 THERE JUST A MINUTE. LOOK AT THAT, IF YOU WILL LOOK
12 AT PAGE 78, BOTH OF US ---

13 BY COMMISSIONER BARDEN:

14 YOURS?

15 BY MR. MCDANIEL:

16 --- BOTH THE DEFENDANTS AND WE HAVE PUT IN MR.
17 RUPPE'S STATEMENT CONFIRMING MR. WINFREY'S TESTIMONY
18 ABOUT THAT -- THAT HE CALLED MR. RUPPE.

19 BY COMMISSIONER BARDEN:

20 OKAY.

21 BY MR. MCDANIEL:

22 PAGE 78.

23 BY COMMISSIONER BARDEN:

24 AND THAT'S R-U-P-P-E.

25 DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

1 Q. AND THEN SO YOU CALLED?

2 A. I CALLED BOBBY AND TOLD HIM WE'RE HAVING MORE
3 PROBLEMS THAN THE LIGHT WITH THE WIRES WERE BROKEN
4 OFF THE SWITCH. I SENT HIM ALL THE PICTURES OF THE
5 WIRES AND THE WIRE BROKEN OFF. AND HE TOLD ME IF
6 THERE WAS NOTHING ELSE I COULD DO WITH THAT STORE TO
7 GO TO MY NEXT JOB, AND I WENT TO ---

8 Q. DID YOU TELL HIM ABOUT THE SHOCK?

9 A. OH, YEAH. I TOLD HIM I WAS HURT.

10 Q. OKAY.

11 A. I TOLD HIM I WAS HURT. I SAID, "I'VE NEVER BEEN HIT
12 THIS HARD BEFORE IN MY LIFE."

13 Q. OKAY.

14 A. AND THAT'S WHEN I WENT TO MY NEXT JOB, AND THAT WAS
15 I HAD TO DRIVE TO AIKEN, AND IT WAS GETTING WORSE,
16 AND WORSE, AND WORSE DURING THE DAY.

17 **BY MR. MCDANIEL:**

18 COMMISSIONER, IF YOU WILL LOOK AT PAGE 80.
19 THEY ACTUALLY HAVE GIVEN US A COPY, AND THEY HAD --
20 THEY SUBMITTED AND WHEN -- WHEN THEY SUBMITTED IT,
21 WE WERE ABLE TO OBTAIN A COPY, AND IT'S THE ACTUAL
22 DRIVER'S LOG SHOWING THAT HE WAS -- THE TIME HE WAS
23 AT PUBLIX AND WHAT HE'D LIKE ---

24 **DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:**

25 Q. WERE YOU ABLE -- CLARENCE, WERE YOU ABLE TO FINISH --

1 - AFTER THE ELECTRICAL SHOCK, YOU WENT OUTSIDE AND
2 CLEARED YOUR HEAD AND GOT -- GOT YOUR COMPOSURE AND
3 ALL THAT; HOW WERE YOU FEELING? WHERE WERE YOU HURT
4 AND ALL?

5 A. MY ARM AND NECK AND DOWN THROUGH HERE WAS
6 (INDICATING).

7 **BY COMMISSIONER BARDEN:**

8 YOUR CHEST?

9 **BY THE WITNESS:**

10 YES, AND IT WAS ---

11 **BY COMMISSIONER BARDEN:**

12 YOUR LEFT SIDE OF YOUR CHEST?

13 **BY THE WITNESS:**

14 YES, MA'AM.

15 **BY COMMISSIONER BARDEN:**

16 OKAY.

17 **BY THE WITNESS:**

18 AND THEN I'M SAYING THE NEXT DAY WHEN I GOT UP,
19 I WAS GOING TO GO TO WORK.

20 **BY COMMISSIONER BARDEN:**

21 YOUR SHOULDER AREA?

22 **BY THE WITNESS:**

23 YES.

24 **BY COMMISSIONER BARDEN:**

25 WHEN YOU ARE EXTENDING THAT -- WHEN YOU SAY

1 THAT IT'S DOWN ---

2 BY THE WITNESS:

3 MY -- RIGHT THROUGH HERE (INDICATING).

4 BY COMMISSIONER BARDEN:

5 HOW FAR DID IT EXTEND?

6 BY THE WITNESS:

7 RIGHT -- LEFT THROUGH HERE.

8 BY COMMISSIONER BARDEN:

9 THROUGH YOUR SHOULDER OR YOUR SHOULDER AREA?

10 BY THE WITNESS:

11 YEAH. AND THE NEXT MORNING WHEN I GOT UP, I
12 WAS JUST DRIPPING SWEAT. AND I TRIED TO WORK. I
13 WENT TO THE WAL-MART ON ---

14 BY COMMISSIONER BARDEN:

15 WHEN DID THE SWEATING OCCUR, THE NEXT MORNING?

16 BY THE WITNESS:

17 I MEAN, I WAS DRIPPING.

18 BY COMMISSIONER BARDEN:

19 OKAY.

20 BY THE WITNESS:

21 AND I WENT TO THREE SEVENTY-EIGHT, THE WAL-
22 MART, AND I CAN'T -- I THINK IT WAS EIGHT EIGHTY-ONE
23 OR SOMETHING LIKE THAT, EIGHT -- EIGHT ONE EIGHT. I
24 CAN'T REMEMBER THE NAME OF THE -- THE NUMBER.

25 BY COMMISSIONER BARDEN:

1 THAT'S OKAY.

2 **BY THE WITNESS:**

3 AND I WAS LAYING ON MY BACK 'CAUSE THAT'S THE -
4 - YOU KNOW WHAT I MEAN? IT HURT IF I STOOD UP AND
5 THEN ON MY HEAD, SO I LAID DOWN. I HAD TO GO TO
6 WHALEY'S TO GET SOME FUSES. I DROVE TO WHALEY'S IS
7 DOWN THE ROAD, CAME BACK, PUT THE FUSES IN. THAT'S
8 WHEN I CALLED BOBBY RUPPE, AND I SAID, "MAN, I CAN'T
9 DO IT. I'M SORRY." I EVEN APOLOGIZED TO PEOPLE IN
10 THE DELI, BUT I WAS IN TOO MUCH PAIN. AND WHEN I
11 LEFT THAT WAL-MART, BOBBY HAD PEGGY DUNCAN CALL ME.
12 SHE WORKS FOR THE COMPANY AND SAID THAT THEY JUST
13 CALLED -- WAL-MART JUST CALLED AND SAID ALL THE
14 FRYERS ARE DOWN. AND I SAID, "WELL, PEGGY, I'M
15 SEVERELY HURT, BUT I WILL GO BACK 'CAUSE I JUST LEFT
16 THERE." SO I WENT BACK AND THEY LOST POWER TO ALL
17 THE FRYERS. THAT'S WHEN I CALLED BOBBY BACK AND
18 SAID "THEY LOST POWER, AND THEY NEED AN
19 ELECTRICIAN." AND I TOLD HIM "I CAN'T DO NOTHING
20 ELSE. I'VE GOT TO GO HOME," AND THAT'S WHAT I DID.

21 **DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:**

22 Q. AND THEN WHAT DID YOU DO BETWEEN THEN AND -- WE'RE
23 GOING TO TALK ABOUT THE 27TH IN JUST A MINUTE, BUT
24 BETWEEN THAT -- THE DAY THAT YOU CALLED BOBBY AND
25 SAID "I CAN'T DO IT ANY MORE; I'M GOING HOME," DID

1 YOU -- WHAT DID YOU DO BETWEEN THEN AND WHEN YOU
2 FINALLY WENT TO I BELIEVE WE'RE GOING TO TALK ABOUT
3 THE MINUTE CLINIC IN A SECOND?

4 A. YEAH, THAT WAS A MONDAY; THAT WAS A HOLIDAY.

5 Q. SO WHAT DID YOU DO -- SO OVER THE WEEKEND?

6 A. OH, I HAD -- I WENT BY WALGREENS AND BOUGHT MOTRIN
7 AND TYLENOL, YOU KNOW, ANYTHING TO WHAT I THOUGHT
8 WOULD HELP.

9 BY COMMISSIONER BARDEN:

10 SO YOU WERE EXPERIENCING PAIN ---

11 BY THE WITNESS:

12 BAD, SEVERE.

13 BY COMMISSIONER BARDEN:

14 OKAY.

15 BY THE WITNESS:

16 YEAH.

17 DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

18 Q. AND IT WAS -- IT -- IT WAS IN THE SAME PLACE AS IT
19 WAS FROM THE -- FROM THE MINUTE OF THE SHOCK?

20 A. YES.

21 Q. IS THAT CORRECT?

22 A. YES, IT WAS MY ARM. IT WENT UP TO MY EAR, AND IT
23 DROPPED LIKE THAT (INDICATING). BUT I JUST ATE
24 MOTRIN AND TYLENOL AND THINGS LIKE THAT, IBUPROFEN.
25 I WAS TRYING TO GET THE PAIN TO GO AWAY, AND I JUST

1 -- I LAID IN BED. THEN MONDAY WAS A HOLIDAY, AND I
2 WENT TO THE MINI CLINIC AT THE C.V.S. ON LAKE MURRAY
3 BOULEVARD, AND I SAT THERE FOR AN HOUR AND TWENTY
4 MINUTES. THE NURSE FINALLY CALLED ME IN, AND SHE
5 GOES, "I CAN'T DO NOTHING FOR YOU. YOU'RE IN TOO
6 MUCH PAIN." I MEAN, SHE COULD TELL BY JUST LOOKING
7 AT ME. AND I SAID, "WHY DID YOU LET ME SIT OUT
8 THERE FOR A HOUR AND TWENTY MINUTES?" SHE SAID SHE
9 CAN'T TALK AROUND OTHER PEOPLE, YOU KNOW WHAT I
10 MEAN, SO SHE HAD TO WAIT 'TIL IT WAS MY TURN TO CALL
11 ME IN. I CALLED BOB SMITH. HE'S PARTIAL OWNER OF
12 THIS COMPANY. I SAID, "BOB, Y'ALL GOT TO -- BOB
13 SMITH IS THE ONE WHO CAME HERE TO INTERVIEW ME;
14 HE'S IN GEORGIA. AND I SAID, "WE GOT TO DO
15 SOMETHING." I SAID, "I'M -- I'M -- I'M IN A LOT OF
16 PAIN. I'VE GOT TO GO TO THE DOCTOR." AND AT THE
17 C.V.S. CLINIC, THE LADY TOLD ME, THE NURSE, SAID
18 "YOU HAVE TO HAVE A DOCTOR. YOU NEED A DOCTOR,"
19 AND THAT'S WHEN I CALLED BOB SMITH WHEN I LEFT
20 THERE, AND ITOLD HIM, I SAID, "I MEAN, WHAT -- I
21 DON'T KNOW IF Y'ALL ARE GOING TO PAY THIS OUT OF
22 POCKET OR WHAT ARE Y'ALL GOING TO DO, BUT I GOT TO
23 GO TO THE DOCTOR." AND THEN THAT FOLLOWING MONDAY -
24 - I MEAN THAT TUESDAY, I WENT TO DR. GREENFIELD AT
25 URGENT CARE, AND SHE'S BASICALLY THE ONE THAT SAVED

1 MY LIFE.

2 Q. NOW, ALSO ON MONDAY THE 27TH, DID YOU -- WHAT KIND
3 OF A -- OF -- OF EQUIPMENT DID YOU HAVE TO
4 COMMUNICATE WITH BOBBY RUPPE? WHAT DID YOU USE TO
5 COMMUNICATE?

6 A. I HAD A COMPANY CELL PHONE, AND THEY FAX -- THEY
7 SENT ALL OF MY WORK ORDERS ON THE IPAD, AND WENT BACK
8 AND FORTH.

9 Q. SO YOU HAD A COMPANY PHONE AND A COMPANY IPAD?

10 A. YES.

11 Q. SO THE COMMUNICATIONS YOU'RE TALKING ABOUT WITH MR.
12 RUPPE AND EVERYBODY ELSE WAS EITHER ON THAT COMPANY
13 PHONE OR THAT COMPANY IPAD?

14 A. RIGHT.

15 Q. OKAY. NOW, WHERE -- DO YOU STILL HAVE THOSE?

16 A. NO. THEY CAME AND GOT THE VAN I THINK THE FIRST
17 WEEK I WAS IN THE HOSPITAL.

18 Q. NOW, SO THE -- THE COMPANY PHONE ANE THE COMPANY
19 IPAD, THAT ---

20 A. THEY COME AND GOT IT, YEAH.

21 Q. OKAY. THAT'S FINE. AND BUT THE REASON I SAY THAT
22 IS THAT WE DO HAVE THE BENEFIT ON PAGE 79, YOU
23 ACTUALLY HAD COMMUNICATED VIA THE IPAD WITH MR.
24 RUPPE?

25 A. YEAH.

1 Q. ON THE 27TH?

2 A. YES. HE WANTED ME TO WRITE SOMETHING ABOUT WHAT

3 HAPPENED. AND I TOLD HIM BASICALLY I WAS TRACING

4 THE WIRE DOWN FROM THE LIGHTS, AND THE THING BLEW

5 UP. THE WIRE WAS BROKEN OFF THE SWITCH.

6 Q. OKAY.

7 A. AND ---

8 Q. OKAY. AND -- AND SO -- AND SO THE SERIES OF --

9 WE'VE LOOKED AT THESE BEFORE, CLARENCE, ON PAGE 79,

10 THIS SERIES OF COMMUNICATION BETWEEN YOU AND MR.

11 RUPPE. THAT'S -- THAT'S THE COMMUNICATIONS YOU HAD

12 THAT DAY ON THE 27TH?

13 A. I BELIEVE SO. YES.

14 Q. ALL RIGHT. NOW, THEN ON THE 20 -- SO TELL ME BASED

15 ON YOUR CONVERSATIONS WITH THE -- WHO WAS THE

16 GENTLEMAN FROM THE COMPANY THAT YOU TALKED TO?

17 A. FOR?

18 Q. OTHER -- NO -- THAN MR. RUPPE?

19 A. OH. BOB SMITH.

20 Q. ALL RIGHT. AND THEN YOU TALKED TO MR. RUPPE, AND

21 THEN WHAT DID THEY TELL YOU TO DO?

22 A. THE REASON I TALKED TO BOB SMITH WAS BECAUSE HE'S

23 THE ONE THAT GOT THE PUBLIX ACCOUNT. THAT WAS HIS

24 ACCOUNT, PUBLIX. AND HE'S A VERY NICE MAN, AND I

25 JUST TOLD HIM "WE GOT TO DO SOMETHING FOR ME. YOU

1 KNOW, WE GOT TO PUT THIS UNDER WORKMAN'S COMP, OR
2 Y'ALL GOING TO PAY FOR IT OUT OF CASH. LET ME KNOW
3 SOMETHING, PLEASE, YOU KNOW WHAT I MEAN?" AND SO
4 THE NEXT DAY THAT'S WHEN I WENT TO GREENFIELD. I --
5 I PAID HER FOR MY VISIT, CASH. SHE, DR. GREENFIELD,
6 I THINK TALKED TO PEGGY, AND THAT'S -- SHE GOT THE
7 WORKMAN'S COMP INSTATED 'CAUSE THIS HAPPENED AT WORK
8 AND ---

9 **BY MR. MCDANIEL:**

10 COMMISSIONER, DR. GREENFIELD'S INITIAL REPORT
11 IS FOUND ON PAGE 66.

12 **BY COMMISSIONER BARDEN:**

13 THANK YOU.

14 **DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:**

15 Q. ALL RIGHT. TELL ME -- BASICALLY BETWEEN THE DATE OF
16 THE ELECTRICAL SHOCK AND -- AND WHEN YOU FINALLY
17 WENT TO THE MINUTE CLINIC AND THEN THE NEXT DAY,
18 WHAT WERE YOU HOPING WAS GOING TO HAPPEN WITH THIS
19 PAIN THAT YOU WERE HAVING IN THE LEFT HAND, ARM, AND
20 ALL THAT?

21 A. I THOUGHT THE IBUPROFEN, MOTRIN WAS GOING TO MAKE IT
22 GO AWAY, BUT LIKE I SAY EVERY DAY IT JUST GOT WORSE
23 AND WORSE, I MEAN, EXCRUCIATING.

24 Q. AND IT WAS ALL UP IN THROUGH YOUR HAND, ARM, LEFT --
25 -

1 A. ALL THE WAY UP.

2 Q. --- LEFT SHOULDER?

3 A. TO MY EAR.

4 Q. AND UP IN WHAT YOU'VE DESCRIBED IT ---

5 A. --- AND DOWN THROUGH HERE (INDICATING).

6 Q. OKAY. AND REFERRING TO THE FRONT PART OF YOUR

7 SHOULDER?

8 A. YEAH.

9 Q. OKAY. ALL RIGHT. NOW, TELL ME WHAT DR. GREENFIELD

10 DID FOR YOU, AND TELL ME ABOUT WHAT HAPPENED AFTER

11 THAT?

12 A. I WENT TO HER. I JUST WANTED SOME MUSCLE RELAXER,

13 AND I WAS GOING TO GO BACK TO WORK. AND A MATTER OF

14 FACT, I THINK SHE WROTE OUT A PRESCRIPTION FOR

15 MUSCLE RELAXER, FLEXERIL I THINK IT WAS. AND THEN

16 SHE PUT THIS LITTLE THING ON MY FINGER. IT MONITORS

17 I GUESS YOUR HEART BEAT. AND SHE SAID, "WHOA,

18 THERE'S SOMETHING WRONG." SHE SAID, "I THINK" -- I

19 -- I CAN'T REMEMBER EXACTLY. IT WAS LIKE 112 OVER

20 SOMETHING, I CAN'T REMEMBER, BEATS PER MINUTE. IT'S

21 SUPPOSED TO BE 70 BEATS OR SOMETHING LIKE THAT, AND

22 IT WAS 112. AND THAT'S WHEN SHE DID THE WHERE YOU

23 LOOK WITH THE -- THEY PUT THIS GEL ON YOU, AND YOU

24 CAN LOOK, YOU KNOW, AND AT THE HEART. SHE SAID I

25 DONE BLEW A HOLE IN MY HEART, AND THAT'S WHEN SHE

1 STARTED FREAKING OUT, AND SHE SENT ME TO DASGUPTA AT
2 LEXINGTON. AND DASGUPTA, I MEAN I WAS RIGHT ACROSS
3 THE STREET FROM THE LEXINGTON HOSPITAL. HE GOT AN
4 AMBULANCE TO DRIVE ME FROM ACROSS -- THAT'S WHERE
5 DR. LIDE WAS WAITING ON ME. AND THAT'S WHEN I MET
6 DR. TRAVIS, WHICH IS A -- A -- A -- PREVENTATIVE --
7 GOOD PEOPLE.

8 Q. AND THEN YOU -- THEY IMMEDIATELY TOOK YOU INTO
9 SURGERY RIGHT AFTER THAT, AFTER THEY DID SOME
10 TESTING?

11 A. MY MEMORY'S NOT SO GREAT, BUT I REMEMBER MEETING DR.
12 LIDE. HE STUCK SOME STUFF INTO MY VEIN AND LOOK --
13 LOOKED AT MY HEART, AND THEN THEY SHAVED ME. AND I
14 THINK IT WAS THE NEXT MORNING I BELIEVE, I MIGHT BE
15 WRONG, THAT'S WHEN TRAVIS -- DR. TRAVIS, AND HE TOLD
16 ME THAT IT WAS A GOOD CHANCE I WOULDN'T BE COMING
17 BACK OUT OF SURGERY. SO THAT'S HOW ALL THAT WENT.

18 BY MR. MCDANIEL:

19 COMMISSIONER, YOU'LL FIND IT IN DR. TRAVIS'S
20 DEPOSITION, DR. TRAVIS SAID THAT WITH THE
21 VENTRICULAR SEPTAL DEFECT, THE HOLE IN HIS HEART,
22 BETWEEN -- THAT IT'S -- MANY TIMES PEOPLE DON'T LIVE
23 THROUGH THAT SURGERY, AND THAT CLARENCE WAS VERY
24 FORTUNATE TO HAVE LIVED THROUGH IT, AND THAT'S --
25 THAT'S IN HIS DEPOSITION SO...

1 BY COMMISSIONER BARDEN:

2 I'LL READ IT ALL.

3 BY MR. MCDANIEL:

4 I KNOW.

5 BY COMMISSIONER BARDEN:

6 THANK YOU.

7 DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

8 Q. AND SINCE THAT TIME, YOU'VE BEEN UNDER THE TREATMENT
9 OF DR. LIDE AND DR. TRAVIS?

10 A. TRAVIS WANTED ME TO COME BACK IN TEN MONTHS SO HE
11 CAN CHECK THE PATCH. AND I'VE BEEN SEEING DR. LIDE
12 UNTIL THIS -- ALL THIS HAPPENED, AND I DON'T HAVE NO
13 MONEY.

14 Q. HOW ARE YOU -- HOW -- HOW ARE ABLE TO PAY FOR YOUR
15 MEDICATIONS NOW THAT YOU ---

16 A. I WENT TO DR. LIDE THE LAST TIME AND I SAID, "WHAT
17 PILLS DO I -- IF I DON'T GET THESE PILLS, WILL I
18 DIE?" AND HE SAID, "MOST LIKELY." AND THAT'S WHEN I
19 SAID, "PLEASE GIVE ME WHAT I NEED TO EAT," AND HE
20 CUT IT DOWN TO FIVE PILLS. SO -- BUT I FOUND A
21 CHEAPER PLACE, WHICH WAS BI-LO GROCERY STORE, TO
22 HAVE THEM FILLED. AND IF IT WASN'T FOR FRIENDS
23 HELPING ME, I WOULDN'T BE ABLE TO AFFORD THEM.

24 Q. AND YOU'VE BEEN OUT OF WORK SINCE THEN?

25 A. YEAH.

1 Q. AND SO SINCE THEY'VE STOPPED BENEFITS YOU'VE HAD NO
2 MONEY COMING IN. DO YOU HAVE ANY OTHER SOURCE OF
3 INCOME?

4 A. FRIENDS HAVE BEEN HELPING ME; THAT'S IT.

5 Q. I BELIEVE ONE FRIEND UNDER THE DEALERSHIP EXTENDED A
6 LOAN; IS THAT RIGHT?

7 A. OH, YEAH. MR. WAYNER HELPED ME.

8 Q. AND THEN ALSO WE'VE NOW GOT YOU A -- A -- A LOAN?

9 A. YEAH. THE LOAN FOR THE -- AT HICKORY WHATEVER IT
10 WAS. AND MY LANDLORD, SHE BRINGS ME FOOD EVERY
11 NIGHT, JUST ABOUT EVERY NIGHT, TO MAKE SURE I'M
12 EATING.

13 Q. OKAY. LET'S TALK BRIEFLY ABOUT ONE OTHER THING. IT
14 -- IT'S -- IT'S IN HIS RECORD, BUT BASICALLY DR.
15 LIDE -- I MEAN EXCUSE ME -- DR. TRAVIS, WHO'S THE
16 CARDIOVASCULAR SURGEON, WHAT DID HE TELL YOU ABOUT
17 THAT HE FOUND IN -- IN YOUR HEART?

18 A. HE SAID HE HAS PICTURES AND VIDEO OF WHERE THE POWER
19 WENT IN ---

20 **BY MR. BAYNE:**

21 WE'LL OBJECT, YOUR HONOR. TO ANY ---

22 **BY COMMISSIONER BARDEN:**

23 SUSTAINED AS TO HEARSAY.

24 **BY MR. BAYNE:**

25 --- ANY REFERENCE OF PICTURES OR VIDEOS.

1 BY MR. MCDANIEL:

2 WELL, YOU KNOW.

3 BY COMMISSIONER BARDEN:

4 I'LL READ THE RECORDS, AND THEY'LL SPEAK FOR
5 THEMSELVES.

6 BY MR. MCDANIEL:

7 I KNOW YOU WILL. IT'S ---

8 BY MR. BAYNE:

9 THOSE HAVE NEVER BEEN PRODUCED, SO WE DON'T
10 HAVE ---

11 BY COMMISSIONER BARDEN:

12 OH, OKAY. WELL, I THOUGHT YOU WERE OBJECTING
13 TO HEARSAY, BUT YOU DON'T HAVE THOSE.

14 BY MR. BAYNE:

15 AND -- AND TO HEAR -- I MEAN IT'S HEARSAY AS
16 WELL.

17 BY COMMISSIONER BARDEN:

18 OKAY. ALL RIGHT.

19 BY MR. MCDANIEL:

20 WELL, THAT'S FINE, YOU KNOW.

21 BY COMMISSIONER BARDEN:

22 ALL RIGHT. GO AHEAD, MR. MCDANIEL.

23 BY MR. MCDANIEL:

24 THAT'S ALL RIGHT, COMMISSIONER. IT -- IT --
25 THE FACT THAT HE FOUND A CLEAR ENTRANCE AND EXIT

1 WOUND, HIS TESTIMONY, HIS BACKGROUND EXPERIENCE IS
2 ALL THE ---

3 **BY COMMISSIONER BARDEN:**

4 I WILL READ IT, SIR.

5 **BY MR. MCDANIEL:**

6 I KNOW YOU WILL, AND I -- I'M NOT GOING TO
7 BELABOR IT ANY LONGER. I -- AT THIS ---

8 **BY COMMISSIONER BARDEN:**

9 OKAY.

10 **BY MR. MCDANIEL:**

11 I HAVE NO FURTHER QUESTIONS.

12 **BY COMMISSIONER BARDEN:**

13 YES, SIR. THANK YOU. ALL RIGHT. MR. BAYNE.

14 **BY MR. BAYNE:**

15 THANK YOU, COMMISSIONER.

16 **BY COMMISSIONER BARDEN:**

17 AND YOU ARE FREE TO USE THE CHAIR OR STAND OVER
18 HERE AS WELL.

19 **BY MR. BAYNE:**

20 CERTAINLY.

21 **BY COMMISSIONER BARDEN:**

22 I THINK IT'D BE EASIER FOR HIM AS FAR AS
23 PROJECTING HIS VOICE TOO.

24 **BY MR. BAYNE:**

25 SURE.

1 BY THE WITNESS:

2 THANK YOU.

3 BY COMMISSIONER BARDEN:

4 YES, SIR. IF YOU WANT TO SIT YOU CAN. YOU
5 MIGHT WANT TO SPREAD YOUR STUFF OUT SO...

6 BY MR. BAYNE:

7 SURE. IT'LL MAKE IT EASIER. THANK YOU.

8 CROSS EXAMINATION BY MR. BAYNE:

9 Q. MR. WINFREY, HOW ARE YOU TODAY?

10 A. ALL RIGHT.

11 Q. I JUST WANT TO TALK A LITTLE BIT ABOUT SOME OF THE
12 STUFF YOU JUST TESTIFIED TO. YOU -- YOU TALKED
13 ABOUT THE WIRE, THE LOOSE WIRE HIT YOU ON THE LEFT
14 HAND; IS THAT CORRECT?

15 A. YEAH.

16 Q. AND THAT IS -- THAT'S WHAT YOU CONSIDER TO BE THE
17 ENTRANCE WOUND FOR ---

18 A. THAT'S WHAT ---

19 Q. --- THE ELECTRICAL SHOCK?

20 A. THAT'S WHAT DR. GREENFIELD TOLD ME. IT WENT IN HERE
21 (INDICATING). IT CAME THROUGH MY TOES, AND I WAS
22 TOLD THAT'S WHERE THE POWER TRIED TO GET OUT.

23 Q. OKAY. YOU DON'T HAVE AN EXIT WOUND ON YOUR TOES, DO
24 YOU?

25 A. NO. THEY'RE JUST NUMB.

1 Q. TO -- TO YOUR KNOWLEDGE, ARE THERE ANY EXIT WOUNDS
2 ANYWHERE IN YOUR BODY FROM THIS ELECTRICITY?

3 A. NOT THAT I KNOW OF.

4 Q. OKAY. YOU ALSO TALKED ABOUT AFTER THE ELECTRICAL
5 SHOCK, YOU WERE POINTING TO YOUR LEFT ARM, YOUR
6 SHOULDER, UP INTO YOUR NECK, AND I BELIEVE THE
7 COMMISSIONER WAS TRYING TO CLARIFY. YOU WEREN'T
8 EXPERIENCING ANY CHEST PAIN AT THAT TIME, WERE YOU?

9 A. WELL, THIS IS CHEST TO ME (INDICATING).

10 Q. OKAY.. SO YOU WERE HAVING CHEST PAIN?

11 A. WELL, I MEAN, WHEN IT ORIGINALLY HAPPENED, AT THIS -
12 - ALL THIS HURT (INDICATING) HERE AND DOWN THROUGH
13 HERE.

14 Q. OKAY.

15 **BY COMMISSIONER BARDEN:**

16 SO WOULD YOU SAY, JUST SO THAT THE RECORD IS
17 CLEAR, WHEN YOU SAY SHOULDER I KNOW -- WELL, YOU'RE
18 POINTING BELOW ---

19 **BY THE WITNESS:**

20 YEAH. RIGHT -- RIGHT THROUGH IT -- AND THEN
21 DROPPED DOWN (INDICATING).

22 **BY COMMISSIONER BARDEN:**

23 SO YOU MEAN THE FRONT OF YOUR SHOULDER AND YOUR
24 ---

25 **BY THE WITNESS:**

1 YES.

2 BY COMMISSIONER BARDEN:

3 --- TOP OF YOUR SHOULDER?

4 BY THE WITNESS:

5 YES, MA'AM.

6 BY COMMISSIONER BARDEN:

7 ALL THE WAY UP TO YOUR NECK?

8 BY THE WITNESS:

9 YES, MA'AM.

10 BY COMMISSIONER BARDEN:

11 AND INTO YOUR HEAD?

12 BY THE WITNESS:

13 YES, MA'AM.

14 BY COMMISSIONER BARDEN:

15 OKAY.

16 CROSS EXAMINATION RESUMED BY MR. BAYNE:

17 Q. SO YOU WERE HAVING PAIN IMMEDIATELY AFTER THE SHOCK
18 IN YOUR CHEST; IS THAT RIGHT?

19 A. COMING DOWN, YEAH.

20 Q. OKAY. IN YOUR EMAIL, AND IT'S DEFENDANT'S 99, I
21 BELIEVE WE'VE ALREADY TALKED ABOUT IT. IT WAS A
22 CALL BETWEEN BOBBY RUPPE AND YOURSELF THAT YOU SENT
23 FROM THE IPAD. YOU STATED THAT ---

24 BY COMMISSIONER BARDEN:

25 THIS IS MAY 22ND?

1 BY MR. BAYNE:

2 MAY ---

3 BY COMMISSIONER BARDEN:

4 I MEAN 27TH?

5 BY MR. BAYNE:

6 MAY 27, 2013.

7 BY COMMISSIONER BARDEN:

8 THANK YOU. I GOT IT. THANK YOU.

9 CROSS EXAMINATION RESUMED BY MR. BAYNE:

10 Q. YOU STATED THAT YOU GOT HIT BY POWER, JERKED MY NECK
11 TO GET AWAY FROM THE ROTISSERIE; DO YOU REMEMBER
12 SAYING THAT?

13 A. OH, YEAH. UH-HUH. IF IT WASN'T FOR THE FRYER, I'D
14 A BEEN ON MY BACK.

15 Q. DID YOU MAKE ANY MENTION AT THAT TIME OF PAIN IN
16 YOUR LEFT ARM OR IN YOUR CHEST?

17 A. I TOLD BOBBY "I'VE NEVER BEEN HIT THIS HARD BEFORE
18 IN MY LIFE."

19 Q. OKAY. DID YOU ASK -- DID YOU TELL HIM THAT YOU WERE
20 HAVING PAIN IN YOUR LEFT ARM OR IN YOUR CHEST AT
21 THAT TIME?

22 A. I SENT HIM PICTURES.

23 Q. OKAY. AGAIN MY -- MY QUESTION WAS DID YOU TELL
24 BOBBY THAT YOU WERE HAVING PAIN? DID YOU TELL BOBBY
25 YOU WERE HAVING PAIN IN EITHER YOUR LEFT ARM OR YOUR

1 CHEST AT THAT TIME?

2 A. I CAN'T SAY EXACTLY 'CAUSE I DON'T REALLY REMEMBER.

3 Q. OKAY.

4 A. BUT I THINK I DID TELL HIM IT HIT ME IN THE FINGER,
5 AND I BELIEVE I DID, BUT I MIGHT BE WRONG.

6 **BY MR. BAYNE:**

7 COMMISSIONER, I WOULD POINT YOU ALSO TO
8 DEFENDANTS' NUMBER 98, WHICH IS THE LETTER FROM
9 BOBBY RUPPE, THAT INDICATES ONLY PAIN IN HIS NECK AT
10 THE TIME.

11 **CROSS EXAMINATION RESUMED BY MR. BAYNE:**

12 Q. I WANT TO TALK ABOUT ALSO AFTER THIS -- THIS SHOCK,
13 WHICH OCCURRED I BELIEVE IN LOOKING AT YOUR DAILY
14 DRIVER'S LOG AT DEFENDANTS' 100, YOU ARRIVED AT
15 PUBLIX AT ABOUT 5:30 IN THE MORNING; IS THAT RIGHT?

16 A. I THINK IT WAS MORE LIKE 6:00.

17 Q. OKAY. WOULD IT HELP YOU TO LOOK AT THE DRIVER'S LOG
18 REAL QUICK JUST TO GET THE TIMES?

19 A. I CAN'T; I AIN'T GOT MY READING GLASSES.

20 Q. OKAY. IF IT SAYS START TIME 5:30, END TIME 6:00.
21 START TIME 6:00, END TIME 7:45, WOULD THAT BE ABOUT
22 RIGHT?

23 A. IT SOUNDS -- IT'S CLOSE.

24 Q. OKAY. SO THE SHOCK THAT -- THAT YOU HAD ON YOUR
25 LEFT HAND OCCURRED SOME TIME BETWEEN 5:30 AND 7:45

1 WHEN YOU LEFT PUBLIX?

2 A. IT HAPPENED ABOUT 7:15, 7:20, 'CAUSE I CALLED BOBBY.
3 BOBBY WAS STILL AT HOME.

4 Q. SO IT WAS SOME TIME BETWEEN 7:15 AND 7:20 IN THE
5 MORNING ---

6 A. YES.

7 Q. --- AT PUBLIX. OKAY. AFTER THE PUBLIX, YOU WENT TO
8 A WAL-MART FROM IT LOOKS LIKE ABOUT 7:45 UNTIL
9 10:15; IS THAT ABOUT RIGHT?

10 A. DOWN IN AIKEN.

11 Q. OKAY. THAT WAS THE AIKEN WAL-MART?

12 A. AND I WORKED ON TWO ROTISSERIES THERE, AND I PUT
13 COTTER PINS IN THEM, GOT THEM RUNNING. AND TOLD
14 BOBBY "I CAN'T -- I'M DONE." I COULDN'T DO NOTHING
15 ELSE, AND IT WAS GETTING WORSE AND WORSE.

16 Q. AND THAT WAS ABOUT 12:15 WHEN YOU ENDED THE DAY?

17 A. LIKE THREE-AND-A-HALF HOURS, SO I GOT BACK PROBABLY
18 AT 1:30 I THINK IT WAS -- 1:00.

19 Q. OKAY. AND YOU STATED YOU WENT HOME AFTER THAT?

20 A. YEAH.

21 Q. AFTER THAT LAST APPOINTMENT. ALL RIGHT. BUT YOU
22 DIDN'T START EXPERIENCING ANY SWEATING UNTIL THE
23 NEXT MORNING?

24 A. NEXT MORNING 'CAUSE I MEAN I JUST WANTED TO WORK. I
25 LOVE MY JOB. AND WHEN I WAS PUTTING MY BOOTS ON, IT

1 LOOKED LIKE RAIN.

2 Q. AND THE -- WHAT TIME DID YOU WAKE UP THAT MORNING?

3 A. I USUALLY WAKE UP AROUND 6:00 EVERY MORNING.

4 Q. SO IT WAS ABOUT 24 HOURS, 23 HOURS AFTER THE SHOCK
5 THAT YOU STARTED EXPERIENCING ALL THAT SWEATING?

6 A. YEAH. WELL, I MEAN, I -- I WOKE UP SWEATING, YOU
7 KNOW.

8 Q. YOU WOKE UP SWEATING. ALL RIGHT. AND YOU WENT TO
9 WORK THAT DAY AT A WAL-MART, WHERE WAS THAT WAL-MART
10 AGAIN?

11 A. THREE SEVENTY-EIGHT, I THINK IT WAS EIGHT EIGHT ONE
12 OR EIGHT ONE EIGHT.

13 Q. OKAY. AND THE -- THE DRIVER'S LOG, WHICH IS AT PAGE
14 101 OF THE DEFENDANTS' APAs SAYS START TIME OF 8:00
15 A.M. AND END TIME OF 3:30; IS THAT CORRECT?

16 A. WELL, LIKE I SAID I -- I WENT TO WHALEY'S. I GOT
17 SOME FUSES, CAME BACK, PUT THE FUSES IN, AND I
18 COULDN'T DO IT NO MORE. I EVEN APOLOGIZED TO THE
19 PEOPLE IN THE DELI. THEY ALL SAID SORRY. I MEAN I
20 WAS IN TOO MUCH PAIN. I LEFT AND THEN THEY -- PEGGY
21 DUNCAN CALLED ME, AND SHE'S NOT THE NORMAL -- BOBBY
22 RUPPE OR, YOU KNOW, THE GUY NAMED DREW THAT WOULD
23 CALL, BUT SOMEWHERE IN THERE PEGGY CALLED ME AND
24 SAID ALL THE FRYERS WERE DOWN. AND I SAID, "WELL,
25 PEGGY, I'M SEVERELY HURT," AND I SAID, "I'M BAD." I

1 SAID, "BOBBY KNOWS THIS." AND I SAID, "BUT I JUST
2 LEFT THERE, AND I'LL TURN AROUND AND GO BACK." AND
3 THAT'S -- I CHECKED THE POWER, AND THEY LOST ALL THE
4 POWER TO ALL THE FRYERS SO THEY HAVE TO -- WAL-MART,
5 IF IT'S A POWER ISSUE THEY HAVE TO HAVE AN
6 ELECTRICIAN. I CAN'T DO IT. DO YOU SEE WHAT I'M
7 SAYING? WORKING ON EQUIPMENT I CAN DO, CERTAIN
8 EQUIPMENT. SO I TOLD THEM THEY HAD LOST THE POWER
9 AND THEY GOT TO GET A ELECTRICIAN. THAT'S THE THIRD
10 TIME THAT I'VE BEEN AT THE SAME WAL-MART WHERE THEY
11 LOST POWER TO THEM FRYERS.

12 Q. SO MY QUESTION WAS YOUR TIME SHEET SAYS 8:00 A.M.
13 'TIL 3:30, WAS -- WERE YOU THERE UNTIL 3:30, OR DO
14 YOU THINK YOU LEFT BEFORE THEN?

15 A. I -- I CAN'T REMEMBER.

16 Q. OKAY. WHO -- WHO FILLS OUT THESE TIME SHEETS?

17 A. I THINK I JUST -- THIS IS IN THEM, RIGHT?

18 **BY COMMISSIONER BARDEN:**

19 JUST -- YOU CAN'T GIVE ME ---

20 **BY THE WITNESS:**

21 I CAN'T LOOK ---

22 **BY COMMISSIONER BARDEN:**

23 --- JUST BEST YOU CAN., IT'S ALL RIGHT.

24 **BY THE WITNESS:**

25 AGAIN, I MEAN, IT'S HARD.

1 **BY COMMISSIONER BARDEN:**

2 IF YOU DON'T KNOW THE ANSWER, YOU DON'T KNOW
3 THE ANSWER.

4 **BY THE WITNESS:**

5 I DID -- ON THE IPAD, I WRITE DOWN WHERE I
6 WENT, AND THERE'S TIME AND THEN IF I WENT TO FOUR OR
7 FIVE PLACES THAT DAY, THAT'S HOW YOU DETERMINE THE
8 TIME AND EVERYTHING, TIME THAT YOU LEAVE, TIME YOU
9 GET HOME.

10 **CROSS EXAMINATION RESUMED BY MR. BAYNE:**

11 Q. SO YOU WOULD OF ---

12 A. SO I THINK ---

13 Q. --- YOU WOULD HAVE SUBMITTED THOSE TIMES?

14 A. I THINK SO. OKAY.

15 Q. OKAY.

16 A. I'M NOT SURE.

17 Q. THAT'S FINE. SO YOU -- YOU ARRIVED HOME SOMEWHERE
18 AROUND 3:30 THEN?

19 A. I'M -- I'M SAYING I'M NOT SURE.

20 Q. OKAY. BUT IF THAT'S WHAT YOU SUBMITTED THAT WOULD
21 PROBABLY BE CORRECT?

22 A. YES.

23 Q. OKAY. IN YOUR DEPOSITION THAT WE TOOK, DO YOU
24 RECALL ---

25 A. YOU AND ME?

1 Q. --- GIVING YOUR DEPOSITION?

2 A. YEAH.

3 Q. YES, SIR. I HAD ASKED YOU SEVERAL TIMES IN VARIOUS
4 COURSES OF YOUR TREATMENT BOTH THE DAY OF, THE DAY
5 AFTER, THE TIMES THAT YOU TALKED TO BOBBY RUPPE, IF
6 YOU HAD TALKED ABOUT ANY CHEST PAIN AT ALL; DO YOU
7 REMEMBER THE ANSWERS YOU GAVE AT THAT TIME?

8 A. I BELIEVE I SAID ALL THIS PAIN UP HERE (INDICATING)
9 WAS SO EXCRUCIATING I COULDN'T FEEL NOTHING ELSE. I
10 BELIEVE THAT'S WHAT I SAID, I MEAN ---

11 Q. CORRECT. AND ---

12 **BY COMMISSIONER BARDEN:**

13 AND YOU'RE POINTING TO YOUR SHOULDER AND TO
14 YOUR ---

15 **BY THE WITNESS:**

16 MY ARM. THERE, YEAH. MY -- WENT THROUGH HERE
17 AND DOWN MY BACK. YOU KNOW WHAT I MEAN?

18 **CROSS EXAMINATION RESUMED BY MR. BAYNE:**

19 Q. AND MY -- MY QUESTION IS TODAY YOU'VE TALKED ABOUT
20 YOU TALKED TO BOBBY ABOUT SOME CHEST PAIN, AND I'D
21 LIKE TO -- TO READ YOU A -- A QUESTION AND YOUR
22 ANSWER, AND LET ME KNOW IF THAT HAS CHANGED OR IF --
23 IF YOUR ANSWER IS STILL THE SAME. YOU WERE ASKED,
24 AND THIS IS ON PAGE 19 OF MR. WINFREY'S DEPOSITION
25 AT LINE 24, "ON THE NEXT DAY THAT YOU WORKED, DID

1 YOU TALK TO BOBBY AT ALL ABOUT HAVING CHEST PAIN?"
2 AND YOUR ANSWER WAS, "I JUST TOLD HIM I HAD A LOT OF
3 PAIN IN MY NECK"; IS THAT CORRECT?

4 A. MY ARM AND NECK, YEAH.

5 Q. OKAY. SO YOU WEREN'T -- AT THE TIME, YOU DID NOT
6 TELL HIM YOU WERE HAVING ANY CHEST PAIN; IS THAT
7 RIGHT?

8 A. AND LIKE I SAID THEN TOO WAS THIS PAIN WAS SO GREAT
9 I COULDN'T FEEL NOTHING ELSE.

10 Q. OKAY. WHEN YOU WENT TO DR. GREENFIELD ON THE 28TH
11 OF MAY, YOU INDICATED YOU WEREN'T HAVING ANY CHEST
12 PRESSURE AT THAT TIME; IS THAT RIGHT?

13 A. JUST MY ARM AND NECK.

14 Q. AND YOU INDICATED TO HER THAT IT WAS DUE TO A SHOCK
15 OF 480 VOLTS; IS THAT RIGHT?

16 A. I TOLD HER HIGH VOLTAGE.

17 Q. DID YOU TELL HER 480 VOLTS?

18 A. I SAID 240, 480, YES. I MEAN, I'VE NEVER BEEN HIT
19 LIKE THIS BEFORE, NEVER.

20 Q. TODAY I THINK YOU WERE TALKING EARLIER ABOUT IT WAS
21 240 VOLTS, IS THAT ---

22 A. OR GREATER IS WHAT I SAID.

23 Q. OR GREATER, SO IS AT LEAST 240 VOLTS?

24 A. WELL, YEAH. IT SAYS HIGH VOLTAGE.

25 Q. OKAY. YOU ALSO INDICATED THAT DR. GREENFIELD TOLD

1 YOU THAT YOU HAD A HOLE IN YOUR HEART; IS THAT
2 RIGHT?

3 A. WHEN SHE DID THE -- I THINK THEY CALL IT ECHO, I'M
4 NOT SURE. YEAH, SHE SAID "YOU GOT MORE PROBLEMS
5 THAN JUST YOUR, YOU KNOW, YOUR NECK AND" -- SHE
6 SAID, "YOU DONE BLEW A HOLE IN YOUR HEART." AND
7 THEN SHE GOES, "WHERE DID THIS HAPPEN AT?" AND I
8 SAID -- SHE'S THE ONE THAT POINTED OUT THE HOLE IN
9 MY FINGER. AND SHE SAID, "THAT'S WHERE THE POWER
10 WENT IN," AND SHE SAID, "IT'S BEGIN WITH, BOOM, LIKE
11 THAT AND BLEW A HOLE IN HEART." THAT'S WHAT SHE
12 TOLD ME.

13 Q. DID -- DID DR. GREENFIELD TELL YOU AT ALL ABOUT THE
14 PAIN IN YOUR LEFT ARM OR SHOULDER AND -- AND WHAT
15 THAT INDICATED OR WHAT THAT CAME FROM?

16 A. SHE SAID THE POWER PROBABLY WENT UP, HIT THIS MAIN
17 MUSCLE HERE (INDICATING) AND THEN DROPPED DOWN.

18 BY MR. BAYNE:

19 OKAY. I HAVE NO FURTHER QUESTIONS.

20 BY COMMISSIONER BARDEN:

21 THANK YOU, MR. BAYNE. ANY QUESTIONS, OTHER
22 QUESTIONS, MR. MCDANIEL?

23 BY MR. MCDANIEL:

24 NONE, COMMISSIONER.

25 BY COMMISSIONER BARDEN:

1 OKAY. THAT'S THE CLAIMANT'S CASE.

2 BY MR. MCDANIEL:

3 CLAIMANT'S CASE, COMMISSIONER.

4 BY COMMISSIONER BARDEN:

5 ALL RIGHT. MR. BAYNE, YOU HAVE A WITNESS HERE?

6 BY MR. BAYNE:

7 COMMISSIONER, I HAVE AN EMPLOYER REPRESENTATIVE
8 THAT I'D LIKE TO PUT UP FOR JUST A MINUTE TO ---

9 BY COMMISSIONER BARDEN:

10 SURE. ALL RIGHT..

11 BY MR. BAYNE:

12 --- ASK A COUPLE OF QUESTIONS.

13 BY COMMISSIONER BARDEN:

14 SIR, I'M GOING TO LET YOU GO SIT NEXT TO MR.
15 MCDANIEL.

16 BY THE WITNESS:

17 THANK YOU.

18 BY COMMISSIONER BARDEN:

19 THANK YOU, SIR.

20 BY MR. BAYNE:

21 AND IF -- IF IT'S ALL RIGHT WITH YOUR HONOR,
22 ONCE WE'RE DONE WITH THAT I HAVE A COUPLE OF
23 SECTIONS IN THE DEPOSITIONS I'D JUST LIKE TO POINT
24 YOUR ATTENTION TO.

25 BY COMMISSIONER BARDEN:

1 WESLEY MARK WARREN.

2 **BY COMMISSIONER BARDEN:**

3 IS THAT M-A-R-K?

4 **BY THE WITNESS:**

5 YEP.

6 **BY COMMISSIONER BARDEN:**

7 THANK YOU. PLEASE ANSWER ANY QUESTIONS MR.

8 BAYNE HAS.

9 **DIRECT EXAMINATION BY MR. BAYNE:**

10 Q. MR. WARREN, WHAT DO YOU DO FOR A LIVING?

11 A. RIGHT NOW, I'M ASSISTANT SERVICE MANAGER FOR ARCHWAY
12 SERVICE.

13 Q. OKAY. AND ARE YOU FAMILIAR WITH MR. WINFREY?

14 A. YES.

15 Q. ARE YOU FAMILIAR WITH THE DEVICES THAT MR. WINFREY
16 WAS WORKING ON THE DAY THAT HE WAS INJURED?

17 A. AS FAR AS I CAN TELL YOU, IT WAS A ROTISSERIE AND
18 IT, YOU KNOW, IT'S THREE PHASE CURRENT.

19 Q. THOSE ROTISSERIE OVENS, WE -- WE'VE HEARD SOME
20 TESTIMONY THAT IT MIGHT HAVE BEEN BETWEEN 240 AND
21 480 VOLTS. ARE YOU FAMILIAR AT ALL WITH THE ACTUAL
22 VOLTAGE RUNNING THROUGH THOSE MACHINES?

23 A. WITHOUT CHECKING IT WITH A METER, I COULDN'T TELL
24 YOU THE ACTUAL VOLTAGE, BUT THE MACHINE IS RATED FOR
25 480 VOLT, BUT IT CAN ALSO RUN ON 208 VOLT, THREE

1 PHASE.

2 Q. OKAY. DO YOU HAVE ANY IDEA ON A GIVEN DAY WHAT KIND
3 OF VOLTAGE IS RUNNING THROUGH THAT MACHINE?

4 A. NORMALLY IT SHOULD BE 208 VOLT PER LEG.

5 Q. OKAY.

6 A. YEAH.

7 **BY MR. BAYNE:**

8 COMMISSIONER, I HAVE NO FURTHER QUESTIONS.

9 **BY COMMISSIONER BARDEN:**

10 MR. MCDANIEL, ANY QUESTIONS OF THIS WITNESS?

11 **CROSS EXAMINATION BY MR. MCDANIEL:**

12 Q. TELL ME ABOUT THE THREE LEGS AND THE...

13 A. WELL, YOU GOT -- YOU GOT THREE LEGS OF CURRENT.
14 YOU'VE GOT YOUR -- IF YOU CHECK BETWEEN EACH LEG,
15 YOU'LL HAVE 208 VOLT NORMALLY.

16 Q. RIGHT.

17 A. NOW, I -- I DON'T -- I DON'T KNOW ABOUT THIS UNIT,
18 IF IT'S A -- IF IT WAS -- IT COULD BE WIRED 480. I
19 DO NOT KNOW WITHOUT CHECKING WITH A METER.

20 Q. OKAY.

21 **BY MR. MCDANIEL:**

22 NOTHING -- NOTHING FURTHER, COMMISSIONER.

23 **BY COMMISSIONER BARDEN:**

24 THANK YOU.

25 **BY MR. MCDANIEL:**

1 OH.

2 **BY COMMISSIONER BARDEN:**

3 GO AHEAD.

4 **CROSS EXAMINATION RESUMED BY MR. MCDANIEL:**

5 Q. NO. I WAS JUST GOING TO SAY, IS MR. RUPPE STILL
6 WITH THE COMPANY?

7 A. YES.

8 Q. OKAY. AND THE OTHER -- ARE ALL THE OTHER FOLKS
9 WE'VE REFERRED -- YOU'VE HEARD REFERRED TO TODAY,
10 ARE THEY STILL WITH Y'ALL?

11 A. YEAH, EVERYBODY'S STILL THERE. YEAH.

12 **BY MR. MCDANIEL:**

13 NOTHING FURTHER.

14 **BY COMMISSIONER BARDEN:**

15 ALL RIGHT.

16 **BY MR. BAYNE:**

17 NO REDIRECT.

18 **BY COMMISSIONER BARDEN:**

19 ALL RIGHT. THAT CONCLUDES THIS PROCEEDING.
20 (THERE BEING NO FURTHER QUESTIONS, THIS HEARING WAS
21 CONCLUDED AT THE HOUR OF 10:19 A.M.)

CERTIFICATE OF NOTARY PUBLIC
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1306305

EMPLOYEE/CLAIMANT: CLARENCE WINFREY

EMPLOYER: ARCHWAY SERVICE, INC.

INSURER: AMERICAN FIRE & CASUALTY COMPANY

I, SALLYE DEANNE NELSON, A NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA, DULY COMMISSIONED AND QUALIFIED AS SUCH, DO HEREBY CERTIFY THAT THE FOREGOING 60 PAGES REPRESENTS A TRUE AND ACCURATE TRANSCRIPT OF THE FOREGOING HEARING OF **CLARENCE WINFREY** TAKEN ON THE 13TH DAY OF JANUARY, 2014.

THAT THE WITNESS WAS DULY PLACED UNDER OATH AND ADMONISHED TO SPEAK THE WHOLE TRUTH. THAT THE ORAL HEARING WAS DULY TAKEN AND TRANSCRIBED AS TO THE QUESTIONS PROPOUNDED AND THE ANSWERS GIVEN.

THAT ALL THE OFFERED EXHIBITS, STIPULATIONS AND OBJECTIONS, IF ANY, INVOLVED IN THIS CASE ARE DULY ATTACHED OR INCLUDED HEREIN.

IN WITNESS WHEREOF, I HAVE SET MY HAND THIS 6TH DAY OF FEBRUARY, 2014.

SALLYE DEANNE NELSON
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 5-08-2022

* THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.

EXHIBIT C

ORDER AND AWARD

OF THE

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1306305

Clarence B. Winfrey, Jr.,

Employee/Claimant,

v.

Archway Services,

Employer,

and

American Fire & Casualty,

Carrier,

Defendant(s).

HEARING:

Date: January 13, 2014

Location: Columbia, South Carolina

APPEARANCES:

Claimant represented by

Preston F. McDaniel, Esquire

Defendant(s) represented by

Brett Bayne, Esquire

PURPOSE OF HEARING:

This matter came before the
Commissioner on a Form 50 and 51

COMMISSIONER:

Susan S. Barden

FILED:

February 27, 2014

APA SUBMISSIONS

At the time for Hearing, pursuant to the Administrative Procedures Act and the Rules of this Commission the parties have made records and reports from the following a part of the Record in this matter: Dr. Jeffrey A. Travis, Lexington Cardiovascular Surgery; Dr. Lanneau D. Lide, Dr. Himadri Dasgupta, SC Heart Center; Dr. Karen Greenfield, Doctor's Care; Lexington Medical Center; Dr. Barry J. Feldman, Lexington Heart; and employer records including a statement of Mr. Bobby Ruppe, emails between Mr. Bobby Ruppe and Clarence Winfrey and driver's daily logs. The Decision and Order of Commissioner T. Scott Beck was also offered as an exhibit but that is part of the Commission file which is admitted without objection. In addition to the APA Submissions and Exhibits, the depositions of Dr. Lanneau D. Lide dated January 23, 2014; Dr. Karen Greenfield dated January 9, 2014; Dr. Barry J. Feldman dated January 6, 2014; Dr. Jeffrey A. Travis dated December 16, 2013; and the Claimant's discovery deposition were admitted into evidence without objection. The Record was left open at the hearing on January 13th for the deposition of Dr. Lide. Counsel for the Claimant noted for the Record that Dr. Barry J. Feldman had neither seen nor evaluated the Claimant and had no personal knowledge of the Claimant and had only performed a records review and therefore his opinions

were not based on personal knowledge nor is there any evidence they are based on a properly phrased hypothetical; however Counsel did not enter any objection to this evidence being received but only asked the Commission to consider this in reference to the weight to be given to this evidence.

STIPULATIONS

The parties stipulated to venue. As to jurisdiction, the Defendants object to jurisdiction based on their argument (based on "law of the case" doctrine) that certain Findings in Commissioner Beck's Order from the Form 15(III) hearing concerning the Defendants stopping temporary benefits without a hearing under SC Code §42-9-260, which is on appeal, deprives this Commissioner of jurisdiction to hear the case on the merits/compensability issue. For the purpose of this hearing, the parties stipulated to an average weekly wage of \$663.57 with a resulting compensation rate of \$442.40 which is the compensation rate at which benefits were initially paid, have been paid and at which the Claimant requests that benefits be reinstated in this matter at this time. This stipulation of the average weekly wage and compensation rate is specifically for the purpose of this hearing only and it is agreed that the Claimant reserves the right to challenge the compensation rate at a later date. No inquiry has been made nor information

requested as to the applicable compensation rate at this point.

The Commission File with the exception of self-serving declarations and unstipulated medicals is made a part of the Record.

STATEMENT OF THE CASE

It is admitted that the Claimant sustained an electrical shock injury on May 22, 2013. The injury was immediately reported by the Claimant to his supervisors and subsequent to that, temporary total disability benefits were started and authorization was given for medical care. Subsequently on September 13th and by written notice on September 16th within the 150 day period allowed by statute, the Defendants through a Form 15 advised the Claimant that they were as of that date denying benefits with the reason given being that a good faith investigation had determined grounds to deny the claim. The Claimant then filed for a Form 15 hearing and filed a Form 50 with the Commission requesting a hearing and a determination that the Claimant had suffered a compensable injury involving injury and conditions resulting from that injury to his heart. Through their Form 51, the Defendants denied that the Claimant sustained injury by accident under the Act. At the hearing, the Defendants' position was that they admitted that the Claimant had sustained an electrical shock injury and based on the

medical reports and depositions, admitted injuries to the left shoulder and neck but specifically denied that the accident had resulted in any injury and/or related conditions to his heart. The Defendants admitted that they had previously authorized treatment with Dr. Lide and Dr. Travis and if Claimant's heart condition is determined to be compensable, Defendants have no opposition to the Claimant continuing to treat with Drs. Lide and Travis for his heart condition, which is injury to the heart. Also, as set out in the Statement of the Case the Defendants take the position that this Commissioner lacks jurisdiction to hear this case. The Claimant's position is that as a result of the electrical shock, he sustained compensable injury including injury to the heart and that temporary total benefits should be reinstated back to the date that they were stopped on September 15th and that he should be provided medical care through Dr. Lide and Dr. Travis until such time as he reaches maximum medical improvement or further order of the Commission. Both parties agree that the issue before the Commission is whether or not the Claimant has sustained compensable injury under the Act as a result of the electrical shock and specifically including injury to his heart which is the major injury and problem for which the Claimant is currently being treated; and that the doctors have not been requested to

opine as to whether or not there are any other medical conditions, problems or injuries stemming from the electrical shock injury.

Finally as to the Defendants' position challenging the jurisdiction of this Commissioner to hear this case; Commissioner Beck had been assigned to that portion of the claim, and after a hearing issued an Order; in reference to the specific issue concerning the termination of temporary benefits without a hearing by the Defendants under SC Code §42-9-260. This Commissioner was assigned to hear this case as to the merits/compensability issue. The Decision of Commissioner Beck is under appeal and after the arguments made at the hearing on this issue were considered by me, this Commissioner would not have held this hearing on the merits if this Commissioner did not believe that in doing so that I was not operating within my authority to hold the hearing on the merits/compensability. Further, in reference to my decision as set forth hereinafter, this Order is not inconsistent with Commissioner Beck's Findings and no attempt was made to change or disagree with Commissioner Beck's Finding of a heart attack occurring on a particular date. In fact, it is my specific and intentional finding based on the evidence presented before me that the Claimant injured his heart on the date of the accident. Under the testimony and evidence.

presented, having made that decision, whether or not the heart attack occurred on a particular date is not made and there is no Finding contained within this Order that the Claimant sustained a heart attack on the date of the shock/electrocution. This Order is written to make Findings in reference to the merits of the claim as to whether or not the injury to the Claimant's heart stemmed from the accident. Whether or not I agree or disagree with Commissioner Beck's Finding as to a particular date for the heart attack, no decision is made on that issue so as to prevent any conflict with the previous Decision by Commissioner Beck and as being an unnecessary Finding to the issues before me, i.e., merits/compensability.

STATEMENT OF FACTS

In addition to the deposition testimony and APA Submissions, the following is a summary of the testimonial evidence given in this matter in relationship to the other evidence presented.

Testimony was taken from the Claimant, Mr. Clarence Winfrey and Mr. Mark Warren. A review of the Form 58 filed by the Defendants did not list Mr. Warren as a potential witness but his testimony was allowed without objection.

Based on the testimony and evidence submitted, the Claimant was working on a commercial rotisserie in the Deli Department of

Publix Supermarket wherein he was tracing a wire on May 22, 2013 when his left hand came in contact with a loose electrical wire resulting in a severe shock knocking and causing him to jerk backwards. Mr. Winfrey during his testimony showed the entrance location and scar from the wound where the electricity entered his left hand. His testimony and description is confirmed by the records of Dr. Karen Greenfield where she recorded at her initial visit on May 28, 2013 an entry wound on the dorsum of the left third finger.

According to both the testimony of Mr. Winfrey and Mr. Mark Warren, this commercial unit would be rated between 208 and 480 volts as to the power feeding into and supplying the rotisserie unit. Both witnesses agreed also that the exact power rating could not be determined without testing the machine. After receiving the electrical shock, the Claimant immediately went outside because he was stunned and wherein he was having pain from his left hand extending through his left arm into his left shoulder and into and over his left shoulder and into his neck. When describing the pain and location, the Claimant described the pain in his shoulder area as being from the top of his shoulder into the front part of the shoulder which he demonstrated by extending his hand from just on top of the shoulder into the front part of the shoulder and chest area.

According to Mr. Winfrey's testimony which is confirmed by the employer records and particularly the statement of Mr. Bobby Ruppe, and as confirmed on the driver's daily log, he immediately reported the shock to his employer when he was advised that if he needed to, to go to the doctor. The records also confirm Mr. Winfrey's testimony that he received a hard shock.

Mr. Winfrey testified that when he received the shock that he both jerked and was knocked away from the machine and because of the location of the pain and the severe pain he was having in his shoulder and neck, he thought he had hurt his neck. He tried to avoid going to the doctor hoping that he would get better but his pain continued in his left hand, arm, shoulder and up into the left side of his neck as described previously from the time of the shock until he finally went to the doctor. He first went to a Minute Clinic on the day before he went to see Dr. Greenfield but due to the severity of his pain, he was told he would have to seek medical attention outside of the Minute Clinic, at which point he went to Dr. Greenfield at Doctor's Care. He testified that while his pain was continuous from the time of the shock, it continued to worsen until he finally had to seek medical attention. A review of the histories of all doctors that initially treated the Claimant establish a

consistent history that the problems he had begun with and continued from the point of the shock and continuing until he sought medical care with Dr. Greenfield. For example, Dr. Dasgupta, to whom Mr. Winfrey was sent by Dr. Greenfield immediately upon the abnormal EKG and diagnosing him with tachycardia, electrical shock, and muscle shock, recorded in his medical summary, "received an electric shock in five days ago and since then has complained of a pain in his left shoulder radiating to the left scapula region, the left side of his neck, left intraclavicular region and left arm." This description again is consistent with the history given by Mr. Winfrey to all doctors involved initially in his treatment.

The Claimant's condition was such on May 28th that Dr. Dasgupta whose office is directly across the street from Lexington Medical Center required an ambulance to take the Claimant to Lexington Medical Center where he was admitted and where he immediately had the catheterization performed by Dr. Lide, and then immediate surgery by Dr. Travis.

This injury was properly reported and once reported, benefits were started and medical care was authorized through Dr. Greenfield, Dr. Lide and Dr. Travis and he remains under the care of Dr. Travis and Dr. Lide at the time of this hearing. Compensation benefits were paid at the rate of \$442.40 up to and

including September 15th when compensation benefits and medical care were stopped based on an alleged good faith investigation which established grounds for denial.

Based on the above summary of the evidence and after due and proper consideration of the testimony and evidence presented, I find that Mr. Winfrey has sustained his burden of proof by proving by a preponderance of the evidence that he sustained compensable injury to include specifically injury to his heart as a result of the electrical shock that occurred on May 22, 2013, and specifically including that the electrical shock resulted in the Claimant's heart attack, myocardial infarction, and ventricular septal defect (VSD), and including the specific entrance and exit wounds and damage to the heart as described by Dr. Travis all being physical injuries to the heart stemming from this accident. Therefore, the Claimant is entitled to the benefits sought to include the provision of medical care and the resumption of temporary total benefits from September 15, 2013 when those benefits were stopped until further order of the Commission. Wherefore, I have made the following findings of salient fact:

FINDINGS OF FACT

1. Claimant injured his neck and left shoulder in an admitted accident on May 22, 2013. Claimant alleges that he

also injured his heart on the date of the accident, which injury (a) aggravated a pre-existing condition, and (b) ultimately resulted in a myocardial infarction and subsequent ventricle septal defect.

2. Claimant is 51 years of age (testimony of Claimant).

3. Claimant finished the 12th grade, but did not receive a diploma (Claimant's Deposition, pages 6-7).

4. Claimant's prior employment includes work (a) at USC installing Wi-Fi, (b) as electrical maintenance man at F. B. Johnson, (c) as an electrician for a company that "roughs in" wiring for new houses; and (d) as a roofer (Claimant's Deposition, pages 9-11 and 13; testimony of Claimant).

5. On the date of the accident, Claimant's job with Employer was equipment maintenance worker for deli and bakery departments at Publix and Wal-Mart stores (testimony of Claimant; Defendants' APA #9, page 94; Claimant's Deposition, page 11).

6. In the mechanics of the accident, Claimant was shocked with 240-480 volts of electricity; Claimant believes the actual voltage was 480 volts. Defendants' witness admitted at the hearing that he was unsure of the voltage amount involved, and Defendants did not present any evidence to rebut Claimant's estimation even though Employer had access to the rotisserie in question. The fact that Defendants did not present any specific

evidence leads me to rely on Claimant's estimation (Defendants' APA #7, page 90; testimony of Warren; Claimant's APA #5, page 78).

7. Temporal medical evidence from May 28, 2013, supports Claimant's testimony that Claimant experienced pain (the worst of which was in his neck, but was also in the front of his shoulder and his left arm as well) from the moment of the accident which got progressively worse. Dr. Greenfield testified that Claimant (a) rubbed his arm during the examination, and (b) reported that his arm hurt. Claimant began sweating the same night of the Thursday accident and also the next morning (Defendants' APA #7, page 90; Defendants' APA #8, page 91; Claimant's APA #2, page 56; Claimant's APA #3, page 66; Deposition of Dr. Feldman, page 35; Claimant's Deposition, pages 13-16, 18, 20-21, and 32; Deposition of Dr. Greenfield, including but not limited to pages 5, 8, 16, and 21).

8. Dr. Travis stated that neck pain is a common presentation for a heart attack (Deposition of Dr. Travis, page 21).

9. Three physicians have all opined to a reasonable degree of medical certainty that the electric shock ultimately resulted in Claimant's heart attack, regardless of the date on which the infarction occurred. The deposition testimony of Dr.

Travis (the treating cardiovascular surgeon) is very compelling, as he--unlike any of the other physicians involved in this case--actually examined Claimant's heart in the operating room. Dr. Lide (the treating cardiologist) also links the electrical shock to Claimant's post-accident heart condition; in fact, Dr. Lide testified twice that he does not "see any way" that Claimant's infarction and VSD are not related to the injury. The third physician is a general physician board certified in family medicine (Claimant's APA #1, page 1; Claimant APA #2, pages 23-24; Claimant's APA #3, page 65; Deposition of Dr. Greenfield, pages 30-31; Deposition of Dr. Travis, including but not limited to pages 8, 13-17, and 23-32; Deposition of Dr. Lide in its entirety, including but not limited to pages 14, 23-24, 28, and 39).

10. Even if I discount or disregard the opinion of the general physician (board certified in family medicine), I give great weight to the opinions of the Drs. Travis and Lide, who both opine that the heart condition is causally related. I fully considered the opinion of Dr. Feldman (the only physician who states that there is no nexus between the electrical shock and the heart condition), but his opinion is outweighed by the opinions of the three other doctors, all three of whom treated Claimant rather than simply reviewing his medical records. I

note that Dr. Feldman (a) did not examine Claimant or even speak with Claimant; (b) did not see Claimant's heart, as opposed to Dr. Travis, who held it in his hand; (c) initially states in his written opinion that it is "possible" that there was no connection between the plaque rupture and the electrical shock, and then in the very next sentence states that it is of the "highest certainty;" (d) Dr. Feldman is a cardiologist and not a cardiovascular surgeon; nor has he undergone a surgical residency; and (e) Dr. Feldman was specifically asked to opine in writing as to whether there was a connection between an electrical shock and a VSD, although he does address other pertinent issues for Defendants in his deposition (Defendants' APA #10, page 97; Deposition of Dr. Feldman in its entirety, including but not limited to pages: 5-6, 10-11, and 17—lines 15 through 25; page 18—lines 1-14; pages 22-23, 31, 42-43, and 45-47; Deposition of Dr. Greenfield, page 4).

11. The statement by Ruppe is dispositive only of the fact that Claimant has a good work ethic (Defendants' APA, Exhibit 1).

12. Claimant has not reached maximum medical improvement.

13. Drs. Travis and Lide are hereby named the treating physicians. Although Defendants have denied the compensability of Claimant's heart condition, Defendants do not object to Drs.

Travis and Lide serving as treating physicians.

14. The Claimant is specifically requesting a finding of compensability for the heart and no medical evidence was presented that Claimant sustained or even may have sustained a head or brain injury. I therefore find that at this point he has not met his burden of proof with regard to any injury to the head/brain, and any benefits for the head/brain are denied at this juncture.

15. While the head and brain are listed as bodily parts involved under #3 in the Pre-Hearing Brief, the Claimant also notes in his Pre-Hearing Brief that this is a systemic electrical shock and requests treatment for, "all organs, members and bodily parts determined to be related." I note from the testimony and records of Dr. Greenfield that the Claimant had tenderness in the left arm and shoulder and was diagnosed with muscle shock. In her deposition she stated that this tenderness found on examination is more indicative of actual injury to those areas than just the pain that is caused by a heart attack. Dr. Lide in his treatment notes and specifically on September 17, 2013 recorded that, "we tried this patient on Neurontin last month when he appeared to have peripheral neuropathy secondary to electrocution at work. Dr. Lide also recorded on the August 13th visit that he was having numbness in

his great toe and suggested this neurological symptom was due to the electrical shock he experienced rather than the myocardial infarction. Thus, if any problems are opined to have stemmed from the electrical shock injury which is outside of the area and expertise of Dr. Lide and Dr. Travis, those doctors may request referral for him to other physicians for evaluation and treatment but the Defendants retain the right to contest whether those are related to the accident and to select the physicians for treatment of any causally related problems.

16. For purposes of the hearing before the undersigned, Claimant is very credible. I base this finding on my observations of Claimant's demeanor and on the delivery of his testimony.

17. In reaching my conclusions, I fully considered the facts that Claimant (a) is a smoker, (b) has hypertension, (c) has a family history of "premature coronary artery disease, and (d) had pre-existing severe 3-vessel disease on the date of the accident. However, those four facts were also specifically considered by the 3 physicians who provided opinions to a reasonable degree of medical certainty. Further, Claimant does not allege that his pre-existing disease was caused by the accident; he only alleges an aggravation resulting in an injury to his heart (Defendants' APA #8, pages 91-92; Defendants' APA

#9, page 94; Claimant's APA #2, pages 26 and 28; Deposition of Dr. Feldman, page 37; Claimant's Deposition, pages 26 and 29).

18. Although certainly not dispositive on the issue of compensability, I do note that Claimant had no coronary symptoms prior to the date of the electrical shock (Claimant's Deposition, page 27; Deposition of Dr. Lide, page 7, lines 21-22).

19. Claimant to receive temporary total disability benefits from September 15, 2013, through the present and continuing until further Order of the Commission or by agreement of the parties.

20. Claimant to receive ongoing treatment until he reaches maximum medical improvement.

21. Permanency is premature.

22. The issue of average weekly wage/compensation rate is held in abeyance.

CONCLUSIONS OF LAW

In accordance with SC Code §42-17-40, the following conclusions of law apply in this case:

1. Under SC Code §42-1-160, the decision is made as an injury by accident arising out of and in the course of the employment. The medical problems which the Claimant has and which have resulted in his disability stem from the physical

injury, the electrical shock that he sustained on May 22, 2013. Any medical condition and/or disability that either results directly from the physical injury or which is a pre-existing condition that is aggravated, accelerated or caused to become symptomatic by the physical injury is compensable as injury by accident under SC Law. See for example, Buff v. Columbia Baking Co., 215 S.C. 41, 53 S.E.2d 879 (1949); Walker v. City of Columbia, 247 S.C. 241, 146 S.E.2d 856 (1966); (as to pre-existing conditions being compensable), Mullinax v. Winn Dixie Stores, Inc., 318 S.C. 431, 458 S.E.2d 76 (SC App. 1995).

2. Under SC Code §42-9-10 and SC Code §42-1-120, the determination is made as to the entitlement to disability compensation.

3. Under SC Code §42-15-60 the determination is made as to the provision of medical care.

4. Under the stipulation of the parties, venue is proper and the applicable average weekly wage and compensation rate that applies for the purpose of this hearing is determined. As to jurisdiction, SC Code §42-3-180 provides that this Commission has jurisdiction to decide all questions arising under the Title and states in pertinent part, "all questions arising under this Title . . . shall be determined by the Commission except as otherwise provided in this Title." The Defendants main argument

in taking the position that this Commission does not have jurisdiction is based upon the doctrine of Law of the Case and is based upon certain Findings made by Commissioner Beck in his Order. However, after review of the position of the parties, arguments of the parties, and after review of Commissioner Beck's Order and the general jurisdiction of this Commission to decide issues arising under the Title and the Form 50 and 51 filed in this matter, this Commissioner is found, as a matter of law, to have jurisdiction over these proceedings. The Form 51 filed in this matter specifically admits that both the employee and the employer were subject to the Workers' Compensation Act at the time in question. Further, Commissioner Beck's Order which serves as the basis for the Defendants' argument states and holds:

"IT IS FURTHERMORE ORDERED that all other issues in contention, specifically including the question of whether the Claimant sustained an injury by accident arising out of and in the course of his employment with Defendants resulting on compensable disability is preserved for adjudication at the hearing set pursuant to Claimant's October 21, 2013 Form 50 Employee's Request for Hearing."

5. Under the issues before the Commission for decision, all other issues are held in abeyance for further decision by the Commission.

ORDER AND AWARD

THEREFORE IT IS ORDERED that the Claimant having been found to have sustained compensable injury, temporary total benefits

are ordered at this time to be reinstated from September 15, 2013 at the compensation rate of \$442.40 with weekly compensation payments to continue until further order of the Commission. All benefits which have accrued prior to the date of this Order and which shall accrue before the resumption of weekly compensation payments shall be paid to the Claimant in a lump sum.

IT IS FURTHER ORDERED that the Claimant having been found to have sustained compensable injury specifically to include injury to his heart, the Claimant is to receive medical care for all injuries and conditions stemming from the accident that occurred in this matter and specifically to include all conditions related to the heart as found to be causally related by the authorized treating physicians which are hereby declared to be Dr. Jeffrey A. Travis and Dr. Lanneau D. Lide. The Defendants reserve the right to contest the compensability of any injury or condition opined to be related to the injury involving any bodily part, member, organ or system and the right to direct the treatment for all causally related medical problems outside of the area of expertise of the two (2) authorized treating physicians including the right to choose

authorized treating physicians to provide that medical care.

All other issues are held in abeyance.

AND IT IS SO ORDERED.


Susan S. Barden

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid, in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

February 27, 2014

By: Kristi Love, Administrative
Assistant to Commissioner Barden

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